

EXHIBIT

2

KING
vs.
PARKER, et al.

DEBRA K. INGLIS

October 13, 2021



Tonya Stolze, LCR

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 TERRY LYNN KING,

5 Plaintiff,

CAPITAL CASE

6 vs.

Case No. 3:18-CV-01234

7 TONY PARKER, ET AL,

JUDGE CAMPBELL

8 Defendants.
9

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14 Videoconference Deposition of:
15 DEBRA K. INGLIS

16 Taken on behalf of the Plaintiff
17 October 13, 2021

18 Commencing at 9:05 a.m.
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20
21

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A P P E A R A N C E S

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MR. DEAN ATYIA, Attorney at Law

MS. SOPHIA GORDON - Videographer

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	Page
(None marked.)	

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2 S T I P U L A T I O N S
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5 The videoconference deposition of DEBRA K.
6 INGLIS, was taken by counsel for the Plaintiff, by
7 Notice, at 150 3rd Avenue South, Suite 1100,
8 Nashville, Tennessee, on October 13, 2021, for all
9 purposes under the Tennessee Rules of Civil
10 Procedure.

11 All formalities as to caption, notice,
12 statement of appearance, et cetera, are waived. All
13 objections, except as to the form of the question,
14 are reserved to the hearing, and that said
15 videoconference deposition may be read and used in
16 evidence in said cause of action in any trial
17 thereon or any proceeding herein.

18 It is agreed that TONYA D. STOLZE, LCR,
19 Notary Public and Court Reporter for the State of
20 Tennessee, may swear the witness, and that the
21 reading and signing of the completed deposition by
22 the witness was not discussed.
23
24
25

* * *

THE VIDEOGRAPHER: We are now on the record. Today is Wednesday, October 13th, 2021. The time on the video monitor is 9:05 a.m. This marks the beginning of the deposition of Debbie Inglis. Will counsel please introduce yourselves and state whom you represent.

MS. LEONARD: My name is Lynne Leonard. I'm from the Federal Community Defender Office in Philadelphia, and my colleagues and I represent the Plaintiff, Terry King.

MR. SUTHERLAND: Good morning. My name is Scott Sutherland, and I'm with the Tennessee Attorney General's Office. We represent the Defendants in the case, Tony Parker and Tony Mayes, and the witness, who's here today, Ms. Inglis. To my right is Cody Brandon, Assistant Attorney General, Cody Brandon, and to his right is Dean Atyia, also with our office.

* * *

DEBRA KAY INGLIS,
was called as a witness, and after having been duly
sworn, testified as follows:

EXAMINATION

QUESTIONS BY MS. LEONARD:

Q. Good morning, Ms. Inglis.

A. Good morning.

Q. As I said my name is Lynne Leonard. I'm an attorney at the Federal Community Defender Office in Philadelphia, and I'm representing Terry King in King v. Parker, et al. Thank you for taking the time to come here today and answer my questions.

You've been deposed several times before; is that right?

A. Yes.

Q. Approximately how many times would you say you've been deposed?

A. Oh, my gosh. I'm thinking at least five, maybe more.

Q. Okay. And approximately how many of those were related to executions in Tennessee?

A. Most of them.

Q. Most of the five?

A. Uh-huh.

Q. Okay. Is there any reason you cannot testify truthfully or accurately today?

A. No.

Q. You're not feeling ill?

1 A. No.

2 Q. You're not on any medication that would --

3 A. No.

4 Q. Okay. Are you represented by counsel today?

5 A. Yes.

6 Q. And is that Mr. Sutherland?

7 A. Yes.

8 Q. Okay. If you need to take a break at any
9 time, just let me know.

10 A. Sure.

11 Q. We're all drinking lots of coffee and water,
12 so don't hesitate to ask for a break, if you need
13 one?

14 A. Sure.

15 Q. What did you do to prepare for today's
16 deposition?

17 A. I reviewed the protocol a few times. I
18 reviewed responses from Warden Mayes to Requests for
19 Admissions. Let me think. I think that's the
20 majority of what I did. I did meet with
21 Mr. Sutherland, Mr. Mitchell, and Mr. Dean At --
22 what's Dean -- Dean, your last name?

23 Q. Atyia. Dean Atyia.

24 A. Atyia. Okay. Yes.

25 Q. I think I'm saying that right.

1 A. Uh-huh.

2 Q. Excuse me if I'm not.

3 A. Yes, I did that.

4 Q. Was anyone else in the meetings besides
5 Mr. Sutherland, Mr. Mitchell, and Mr. Atyia?

6 A. Not when they were prepping for my
7 deposition.

8 Q. Okay. And how many times did you meet with
9 those gentlemen?

10 A. Once.

11 Q. And about how long was that meeting?

12 A. Three to four hours.

13 Q. Okay. Did that take place earlier this week?

14 A. That took place last Friday.

15 Q. Okay. And then did you -- you said you
16 reviewed the protocol --

17 A. Uh-huh.

18 Q. -- and some of the Requests for Admissions
19 from Defendant Mayes. Were there any other
20 documents that you reviewed in preparation for
21 today?

22 A. I can't think of any specifically.

23 Q. Okay. Did you review anything else on your
24 own to prepare for today?

25 A. I can't think of anything.

1 Q. Did anything that you review refresh your
2 recollection of any specific issues?

3 MR. SUTHERLAND: Object to the form.
4 Lynne, if you don't mind, I'll just reiterate that
5 all objections will be, with your agreement,
6 subsumed and not objections to form. Ms. Inglis, if
7 you'll just pause before you answer --

8 THE WITNESS: Okay.

9 MR. SUTHERLAND: -- just for two seconds
10 to let me say something so I'll object to the form
11 of that, but you can answer.

12 THE WITNESS: I will.

13 MS. LEONARD: And we agree to that
14 stipulation about the objections.

15 MR. SUTHERLAND: Thank you.

16 BY MS. LEONARD:

17 Q. Did you meet with anyone other than your
18 attorneys at any point to prepare for this
19 deposition?

20 A. I don't think so, no.

21 Q. Did you talk to anyone else involved in this
22 case, perhaps Defendant Mayes or Defendant Parker,
23 or anyone on the Execution Team?

24 A. Not in preparation for this deposition.

25 Q. Okay. Did you review the transcripts of any

1 of the other depositions taken in this case?

2 A. No.

3 Q. Did you review any of the past transcripts of
4 depositions you provided in other cases related to
5 Tennessee inject --

6 A. I did not.

7 Q. -- executions? Did anyone consult with you
8 to prepare for another deposition in this case?

9 A. No.

10 Q. Did Commissioner Parker talk with you about
11 his 30(b)(6) deposition two weeks ago?

12 A. No.

13 Q. Did you review any of the papers that have
14 been filed with the Court in this case?

15 A. I don't remember specifically. I'm sure I
16 saw the original complaint, and I also indicated
17 that I reviewed the responses of Defendant Mayes to
18 the Request for Admissions.

19 Q. Okay. But you didn't review the complaint
20 last week in your meeting or any time --

21 A. No.

22 Q. -- in preparation for today?

23 A. No.

24 Q. Did you discuss the deposition with anyone
25 other than your counsel?

1 A. No.

2 Q. How much time in total do you estimate you
3 spent preparing for the deposition?

4 A. Including the time spent with counsel, maybe
5 eight hours.

6 Q. Okay. And that was reviewing materials?

7 A. Yes.

8 Q. The materials that you listed in meeting with
9 your counsel?

10 A. Right.

11 Q. Okay. Great. What is your highest level of
12 education?

13 A. I have a law degree.

14 Q. Okay. And where did you get that degree?

15 A. Vanderbilt --

16 Q. What year was that?

17 A. -- School of Law. 1984.

18 Q. And do you have an undergraduate degree as
19 well?

20 A. Yes.

21 Q. And what is that degree in?

22 A. It's a Bachelor of Arts from the University
23 of Tennessee.

24 Q. And what year was that?

25 A. Hold on. Let me think. Let's see. '79 or

1 '80.

2 Q. Okay. What was the -- you said it was a
3 Bachelor of Arts?

4 A. Uh-huh.

5 Q. What was the subject you studied?

6 A. Organismal and Systems Biology.

7 Q. Oh, wow, and then you became a lawyer?

8 A. Yes.

9 Q. Okay. What type of training did you get as
10 part of your Bachelor's Degree?

11 A. Oh, I just prepared for classes -- the
12 classes I took.

13 Q. So did that involve some lab work?

14 A. A few courses had some lab work.

15 Q. Okay. And what type of information did you
16 learn as part of that -- in part of that degree?

17 A. Nothing really pertinent to -- to this.

18 Q. So do you have any medical training?

19 A. No.

20 Q. Do you have any scientific expertise?

21 A. No.

22 Q. Okay. Where did you go to high school?

23 A. Maplewood High School here in Nashville.

24 Q. Okay. Did you get any special training at
25 your high school?

1 A. No.

2 Q. Did you specialize in any subjects?

3 A. No.

4 Q. Was it just a regular high school, a
5 regular --

6 A. Sure.

7 Q. -- curriculum?

8 A. Yes.

9 Q. Have you completed any other training
10 courses?

11 A. Can you be more specific?

12 Q. Do you have any -- are you CPR trained?

13 A. No.

14 Q. Have you ever been a lifeguard?

15 A. No.

16 Q. Any other special training of that variety
17 that you can think of, some sort of coursework that
18 you would have taken to have some special
19 capabilities?

20 A. Nothing similar to lifeguard or CPR.

21 Q. Okay. Any military training?

22 A. No.

23 Q. And you said no medical training?

24 A. No.

25 Q. Do you hold any certifications or

1 certificates?

2 A. I don't think so.

3 Q. You're not -- you don't have a real estate
4 certificate or license or you're not a mortgage
5 broker?

6 A. No.

7 Q. Okay. Do you participate in any volunteer
8 programs?

9 A. No.

10 Q. Are you currently employed?

11 A. Yes.

12 Q. By whom?

13 A. The State of Tennessee, Department of
14 Correction.

15 Q. Okay. And is it okay if I refer to that as
16 TDOC?

17 A. Sure.

18 Q. Great. And how long have you been with TDOC?

19 A. Since 1994.

20 Q. What motivated you to join TDOC?

21 MR. SUTHERLAND: Object to the form.

22 You can answer.

23 THE WITNESS: Okay. I was interested in
24 criminal law. I was in the criminal division
25 doing -- I had done some, you know, appellate work,

1 special litigation, including habeas, then I became
2 the head of the Capital Litigation Team, and then
3 the opportunity came available for the General
4 Counsel position at the Department of Correction,
5 and someone encouraged me to apply.

6 And at that time I was thinking --
7 because I was young in my career -- that I would,
8 you know, eventually do something else. And so this
9 was an opportunity to stay in the criminal justice
10 system but also expand my experience into civil
11 matters and employment law and things like that, and
12 so that's what led me to apply.

13 BY MS. LEONARD:

14 Q. Okay. So you started as the general counsel
15 at TDOC; is that right?

16 A. That's right.

17 Q. And that was in 1994?

18 A. Right.

19 Q. Okay. And is that still your current job
20 title today?

21 A. That and I'm also the Deputy Commissioner of
22 Administration.

23 Q. Are those two separate roles?

24 A. Well, yes. Yes.

25 Q. What's -- what is your role as Deputy

1 Commissioner?

2 A. I oversee human resources, offender
3 administration, which includes sentence management,
4 and records management. The Assistant Commissioner
5 for operational support reports to me. That
6 includes training, facilities management,
7 maintenance, other things. I'm also the liaison
8 with STS, which is Strategic Technology Solutions,
9 which is another branch under Finance &
10 Administration, and then I'm also still General
11 Counsel over the Legal Division.

12 Q. Okay. What's your role as General Counsel?

13 A. Provide legal advice, oversee all legal
14 things for the department.

15 Q. I think you mentioned one of your areas that
16 you manage is sentence management. Is that what you
17 said?

18 A. Yes.

19 Q. And what does sentence management mean?

20 A. Sentence computation, which, you know,
21 obviously includes calculation of sentences,
22 providing sentence information, providing, you know,
23 sentence credits that are awarded, authorizing
24 release, anything that you might imagine relates to
25 the length of someone's sentence.

1 Q. Okay. So does that ultimately include the
2 management of executions?

3 A. No.

4 Q. And why not?

5 A. They -- they just don't have any role in
6 that.

7 Q. Okay. So you don't have a role in execution
8 management as opposed to sentence management?

9 A. Not as Deputy Commissioner.

10 Q. Okay. Do you have that role wearing your hat
11 as General Counsel?

12 A. As General Counsel I provide legal advice on
13 all areas including execution.

14 Q. Okay. How long have you held each of these
15 job titles?

16 A. Well, General Counsel since 1994. I'm sorry.
17 I'm not exactly sure when I was also given the
18 Deputy Commissioner role. Four or five years ago
19 maybe.

20 Q. Okay. Within the last five years is fair to
21 say?

22 A. Yes.

23 Q. Okay. Does anyone report to you in your role
24 as Deputy Commissioner?

25 A. Yes.

1 Q. Who reports to you?

2 A. My Deputy General Counsel, my Executive
3 Assistant, and Administrative Assistant. I'm trying
4 to include everyone. The Assistant Commissioner of
5 Operational Support. The Director of Offender
6 Administration. The Director of Human Resources. I
7 think that's it.

8 Q. Okay. Does anyone report to you as General
9 Counsel?

10 A. Yes. The Deputy General Counsel, the
11 Administrative Assistant, the Executive
12 Administrative Assistant. I think that's it.

13 Q. And do you have a legal department at TDOC?

14 A. Yes.

15 Q. You're responsible for overseeing that
16 department?

17 A. Yes.

18 Q. Approximately how many lawyers are a part of
19 the Legal Division at TDOC?

20 A. Let's see. One, two, three, four, five --
21 seven, if you include me.

22 Q. Okay. Are there any lawyers at TDOC who do
23 not report to you?

24 A. Yes.

25 Q. And who are they?

1 A. Tory Grimes, who is our Legislative liaison.
2 He used to work in the Legal Division, and Kelly --

3 MR. SUTHERLAND: You can answer. You
4 can answer the question.

5 THE WITNESS: Sure. Okay. And our
6 Inspector General.

7 BY MS. LEONARD:

8 Q. Okay. So they're the only two lawyers that
9 do not report to you at TDOC?

10 A. Actually, there's another person that has a
11 legal degree in community supervision.

12 Q. Okay. And is it -- the reason they're not
13 reporting to you is because they're not working in
14 their capacity as lawyers for TDOC --

15 A. Correct.

16 Q. -- at this moment? Okay. And who do you
17 report to?

18 A. The Commissioner.

19 Q. And that's in both roles as General Counsel
20 and as Deputy Commissioner?

21 A. Yes.

22 Q. Okay. Do you work with the Attorney
23 General's Office in either of your capacities with
24 TDOC?

25 A. Well, I consult with the Attorney General's

1 Office quite a bit.

2 Q. How frequently would you say?

3 A. Constantly.

4 Q. Constantly. So several times a week?

5 A. Yes.

6 Q. Who's your primary contact with the Attorney
7 General's office?

8 A. Stephanie Reeves is generally over the
9 Department of Correction.

10 Q. Okay. And what do you consult with them
11 about?

12 A. Oh, my gosh, so many different things --

13 MR. SUTHERLAND: I think it's fine to
14 generally discuss what she talks about.

15 BY MS. LEONARD:

16 Q. Yeah. I'm not asking for the substance of
17 the discussions or any legal content of discussions,
18 just the general reasons that you would be
19 consulting with the Attorney General's office or the
20 broad topics?

21 A. Pending litigation, asking for advice about
22 issues that come up, I mean, there -- I mean, it's
23 vast.

24 Q. Do you report directly to the Governor?

25 A. No.

1 Q. Does the Commissioner rely on your legal
2 advice?

3 A. I think he takes it into consideration.

4 Q. Does the Commissioner rely on anyone else's
5 legal advice?

6 A. I don't know.

7 Q. Does anyone else rely on your legal advice?

8 A. Well, I think generally employees of the
9 Department rely on my legal advice.

10 Q. Okay. What prompted you to take on the
11 Deputy Commissioner role?

12 A. The Commissioner asked me to.

13 Q. So you didn't seek out the position?

14 A. No.

15 Q. Did you apply for the position?

16 A. No.

17 Q. Was it competitive?

18 A. No.

19 Q. Did they consider any applicants from outside
20 of TDOC?

21 A. I don't know.

22 Q. Does that role pay additional compensation on
23 top of your General Counsel salary?

24 A. Yes.

25 Q. Are there additional benefits as well?

1 A. One is we're provided a car.

2 Q. Okay. What motivated you to take on the new
3 role after you were asked?

4 MR. SUTHERLAND: Objection to the form.
5 You can answer.

6 THE WITNESS: Primarily because the
7 Commissioner asked me to.

8 BY MS. LEONARD:

9 Q. Okay. Does this -- does this position
10 require any special training?

11 A. I don't think there's any additional
12 training. I had been with the Department for many
13 years and, you know, was familiar with the
14 operation.

15 Q. Was this a new position?

16 A. No.

17 Q. So this was a position that someone else
18 vacated, and then you were asked to step into the
19 role?

20 A. That's right.

21 Q. Okay. What was your prior employment before
22 you became General Counsel at TDOC?

23 A. I was employed at the State Attorney
24 General's office.

25 Q. And what position did you hold there?

1 A. I was an Assistant Attorney General, started
2 out in the General Civil Division. I moved to the
3 Criminal Division. I became a team leader in the
4 Appellate Division. I became the Head of the
5 Special Litigation Division. I became the Head of
6 the Capital Litigation Team.

7 Q. Okay. How many years total were you there at
8 the -- were you at the Attorney General's Office.

9 A. I think eight years.

10 Q. Okay. Do you have a membership in any
11 professional organizations?

12 A. Just the American Correctional Association.

13 Q. How long have you been a member of that?

14 A. Four years maybe. I'm not exactly sure.

15 Q. Do you have a particular role in the ACA?

16 A. I am a Commissioner on the Accreditation
17 Committee.

18 Q. Okay. So what's that require of you?

19 A. That requires me to -- okay. So the American
20 Correctional Association, I'll say ACA, has auditors
21 that go out and audit correctional facilities on a
22 periodic basis, generally every three years, and the
23 auditors prepare a report, and then that report goes
24 to the Commission.

25 And there's a panel of us that will hold a

1 hearing, and representatives from the facility will
2 be there; and we ask questions about the audit. And
3 then we either, you know, recommend approval,
4 re-accreditation or initial accreditation or not.

5 Q. Okay. And roughly how many times a year do
6 you meet in that capacity?

7 A. Four or five.

8 Q. Are you the individual at TDOC with the most
9 personal knowledge of the last 30 years history of
10 Tennessee's execution protocols?

11 MR. SUTHERLAND: I'm going to object to
12 the form. You can answer.

13 THE WITNESS: No, I don't think so.

14 BY MS. LEONARD:

15 Q. Who would you say is the person with the most
16 personal knowledge of that history?

17 A. Thirty years?

18 Q. (Nods head.)

19 A. I don't think I can identify anyone.

20 Q. How about the last 20 years of history of the
21 Tennessee execution protocols?

22 A. Again, I don't think I can identify anyone.

23 Q. Who do you think has more knowledge than you
24 do -- personal knowledge of this topic?

25 A. I can't identify --

1 MR. SUTHERLAND: The same objection.

2 THE WITNESS: -- anyone.

3 BY MS. LEONARD:

4 Q. Has anyone been around TDOC longer than you
5 have?

6 A. Oh, sure. The Commissioner, for example.

7 Q. How long was the Commissioner -- how much
8 longer than you was the Commissioner at TDOC?

9 A. He has well over 40 years, maybe 45. We have
10 some people that have 48 years.

11 Q. And the Commissioner's about to retire; is
12 that right?

13 A. That's right.

14 Q. So you may -- may catch up.

15 A. I might. I don't know if I can last that
16 long.

17 Q. How many wardens have there been at Riverbend
18 since 1994?

19 A. That's going to be tough. I can think of,
20 let's see, one, two, three, four. Since when?

21 Q. 1994 when you started at TDOC.

22 A. Five, I can't say exactly but at least five.

23 Q. Okay. And has Commissioner Parker been the
24 only commissioner of TDOC since 1994?

25 A. No.

1 Q. How many other commissioners have there been?

2 A. I think I've served under maybe six
3 commissioners.

4 Q. And how many governors of Tennessee have
5 there been since 1994?

6 A. Oh, I'm not going to be able to answer that.
7 McWherter, Sundquist, Haslam, Governor Lee. I'm
8 probably missing somebody.

9 Q. Okay. Do you hold any roles in Tennessee's
10 execution protocol?

11 A. No.

12 Q. Have you ever held any roles in Tennessee's
13 execution protocols at any point?

14 A. No, other than providing legal guidance like
15 I do with every aspect of the Department's --

16 Q. Right.

17 A. -- operations.

18 Q. You've never been a part of the execution
19 team?

20 A. No.

21 Q. Have you witnessed executions?

22 A. Not -- I haven't been a witness in the
23 witness room. I have observed some through
24 closed-circuit.

25 Q. Through closed-circuit TV?

1 A. Yes.

2 Q. But you've never been in any witness room --

3 A. No.

4 Q. -- official witness room or any other witness
5 room immediately in the Capital Punishment Unit?

6 A. No, I have not.

7 Q. Have you provided training to anyone in
8 conjunction with Tennessee executions?

9 A. I can't say that I've provided any formal
10 training. I just provided legal advice.

11 Q. Have you been involved in executions outside
12 of Tennessee at any point?

13 A. No.

14 Q. Have you ever witnessed an execution outside
15 of Tennessee?

16 A. No.

17 Q. So you said you've provided legal advice in
18 conjunction with the development of the protocols.
19 How many protocols have you been involved in
20 developing?

21 A. All right. I'm going to have trouble coming
22 up with a number. There was a protocol in place
23 when I came to the Department. I really can't say a
24 number. I'm sorry.

25 Q. So maybe -- I'm hoping you can sort of walk

1 me through what the history has been of the
2 Tennessee execution protocol since you started. So
3 you said there was one in 1994 when you started?

4 A. Right.

5 Q. And then at what point did that protocol
6 change roughly?

7 A. I can't remember the year. I'm sorry. I'm
8 sorry. I can't remember the year, but the chemicals
9 involved did not change for -- until we were unable
10 to get sodium thiopental.

11 Q. Okay. So let's back up a second. What was
12 the protocol in 1994?

13 A. Sodium thiopental. I think it was
14 pancuronium bromide at that point and potassium
15 chloride.

16 Q. And then that changed when you were no longer
17 able to get sodium thiopental?

18 A. Yes.

19 Q. Would that have been late '90s, early 2000s?
20 Can you ballpark any rough time?

21 A. I think it was later than that.

22 Q. Later 2000s?

23 MR. SUTHERLAND: Object to the form.
24 You can answer.

25 THE WITNESS: Sometime in 2000s. I

1 can't remember the year.

2 BY MS. LEONARD:

3 Q. Okay. Why was the Department no longer able
4 to get the sodium thiopental?

5 A. It was just no longer available to
6 Departments of Correction and then later to anyone
7 in the United States.

8 Q. So then what happened when the sodium
9 thiopental became unavailable?

10 A. We reviewed our protocol. And we eventually
11 ended up with a protocol involving pentobarbital.

12 Q. And when you say we reviewed the protocol,
13 who is "we"?

14 A. Well, the Department of Correction in
15 general, that would have been --

16 MR. SUTHERLAND: Yeah. Let's --

17 THE WITNESS: I'm sorry.

18 MR. SUTHERLAND: -- don't mention any
19 persons by name other than the Commissioner, the
20 warden, and the associate warden of security, and we
21 can see where it goes.

22 BY MS. LEONARD:

23 Q. Well, yeah, but if you can give me titles
24 perhaps or roles that this person's had at that
25 time.

1 A. Well, I think that would identify those
2 people.

3 MR. SUTHERLAND: If they're known, like
4 the Commissioner, people that are known in this
5 litigation, if they're not known in the litigation,
6 then don't mention their name or you can call their
7 role.

8 THE WITNESS: Okay. The folks would be
9 the Commissioner, the warden, and I actually think
10 that's all I could say without identifying people.

11 BY MS. LEONARD:

12 Q. Can you give me -- I'm just trying to think
13 of ways to -- I'm not looking for anybody that's on
14 the execution team, but I'm just trying to
15 understand who is it. When you say we reviewed the
16 protocol after sodium thiopental was no longer
17 available --

18 MR. SUTHERLAND: Like, for example, the
19 drug procurer, who's -- I mean, that would be a
20 title of a person that we've used in the litigation,
21 the executioner -- I mean, if those are people that
22 would have participated, we've used those sort of
23 over general identifiers as ways to sort of get
24 information but not, you know...

25 THE WITNESS: Right. But we're kind of

1 going back before then.

2 MR. SUTHERLAND: Oh, gotcha. Okay.

3 THE WITNESS: Yeah.

4 MR. SUTHERLAND: And so to the extent
5 that you can identify people by role, you can
6 answer. If it discloses someone's identity, then I
7 would instruct you not to answer.

8 THE WITNESS: Okay. I mean, it would
9 include the warden, the Commissioner. It would
10 include me. It would include another member of the
11 executive [sic] team, and then another -- another
12 employee of central office.

13 BY MS. LEONARD:

14 Q. Okay. At that time?

15 A. Yes.

16 Q. Okay. And that -- that was the "we" that
17 reviewed -- that's the comprehensive "we" that
18 reviewed the protocol?

19 A. Right.

20 Q. And then what did that group of you do to
21 review the protocol?

22 A. Well, we met a number of times. We talked to
23 a couple of anesthesiologists. We talked to a
24 physician. We reviewed other protocols. That's --
25 I think that's pretty much it.

1 Q. Roughly how many anesthesiologists is a
2 couple?

3 A. Two.

4 Q. Two anesthesiologists and then a separate
5 medical doctor?

6 A. Yes.

7 Q. And what was that individual's expertise
8 then?

9 A. A medical doctor.

10 Q. Was he just a general practitioner or a --

11 A. Yes.

12 Q. He wasn't a surgeon?

13 A. Medical practitioner.

14 Q. Okay. Did you speak with any pharmacists?

15 A. I can't recall if we did.

16 Q. Or pharmacologists?

17 A. I can't recall.

18 Q. Did you consult with any other lawyers at
19 that time?

20 A. No.

21 Q. Okay. And then --

22 A. We might have consulted with the Attorney
23 General's Office but briefly.

24 Q. What other states' protocols did you review
25 at that time?

1 A. I'm probably not going to be able to come up
2 with those. That was quite a while ago. You know,
3 there's -- there are only a certain number of states
4 that have lethal injection protocols. I think we
5 looked at most of those, looked at case law -- I
6 did, but that's too long ago for me to remember
7 which states we're talking about.

8 Q. Do you remember roughly how many states you
9 reviewed?

10 A. Not really.

11 Q. Was it more than five?

12 A. It could have been.

13 Q. More than ten?

14 A. I can't say.

15 Q. Okay. We can come back and see if we can
16 refresh your recollection on some of those states.
17 What happened after the commission met? And I
18 shouldn't call this a commission. What would you
19 call it, a commission, a committee, a review team?

20 A. Working group.

21 Q. Working group. So after this working group
22 met and reviewed the protocol, what happened next?

23 A. We made a recommendation to the Commissioner,
24 the then Commissioner.

25 Q. What was the recommendation?

1 A. At that time the recommendation was to go
2 with a one drug -- one-drug protocol using
3 Pentobarbital.

4 Q. And why did you make that recommendation?

5 A. Just based on the information that we had
6 received.

7 Q. And why is it that you suggested moving from
8 a one-drug protocol when you had previously been
9 using a three-drug protocol?

10 A. Just based on the information that we
11 received.

12 Q. And what information was that?

13 A. About what pentobarbital would do at a large
14 dose, and that's -- that's pretty much it.

15 Q. So did you believe that pentobarbital would
16 be more effective for executions than the previous
17 three drugs you had been using?

18 MR. SUTHERLAND: Objection to the form.
19 You can answer.

20 THE WITNESS: Well, that was our
21 recommendation.

22 BY MS. LEONARD:

23 Q. And that was based on the information you
24 received from the anesthesiologists or the medical
25 doctor, who --

1 A. Another -- yes. Everyone that we consulted
2 with.

3 Q. All collectively said that the Pentobarbital
4 was the way to go?

5 A. No, but collectively the information we
6 received, that was our recommendation.

7 Q. Okay. So did some of the experts suggest
8 that you should not use pentobarbital?

9 A. The experts didn't suggest anything. They
10 just provided information about the pros and cons of
11 different things.

12 Q. And what did they tell you that the pros were
13 of the pentobarbital?

14 A. I can't recall at this point.

15 Q. But you recall that you made the
16 recommendation --

17 A. Yes.

18 Q. -- to ultimately adopt -- it seems like those
19 pros are pretty convincing, I guess, if ultimately
20 that was the basis of your recommendation?

21 MR. SUTHERLAND: Objection to the form.
22 You can answer.

23 THE WITNESS: That was our
24 recommendation.

25 / /

1 BY MS. LEONARD:

2 Q. Okay. So your working group suggested the
3 changes. Who made the final decision about whether
4 to adopt that recommendation?

5 A. The Commissioner.

6 Q. And did the Commissioner adopt that
7 recommendation?

8 A. No.

9 Q. What did the Commissioner do?

10 A. The Commissioner adopted a -- you know,
11 adopted a three-drug protocol.

12 Q. Why did the Commissioner adopt that
13 three-drug protocol rather than the one-drug
14 protocol your team recommended?

15 MR. SUTHERLAND: Object to the form.
16 You can answer, if you know.

17 THE WITNESS: Yeah. I think, you know,
18 you would have to ask him that. But I believe it
19 was -- it's my understanding there was a concern
20 about being -- no state had used a one-drug protocol
21 at that point.

22 BY MS. LEONARD:

23 Q. I see. Did you personally agree with the
24 recommendation to move to a one-drug protocol?

25 A. That was --

1 MR. SUTHERLAND: Object to the form.

2 You can answer.

3 THE WITNESS: Okay. That wasn't my
4 role. That was the Commissioner's decision.

5 BY MS. LEONARD:

6 Q. Right. I'm just asking if you personally, as
7 a member of the working group, agreed with that --
8 the group's recommendation?

9 A. I did, but I did not oppose the
10 Commissioner's decision.

11 Q. Sure. In your opinion would it be preferable
12 for TDOC to be using a one-drug protocol versus a
13 three-drug protocol?

14 MR. SUTHERLAND: Object to the form.
15 You can answer.

16 THE WITNESS: If we could get
17 pentobarbital, we would use that. But we have not
18 been able to get pentobarbital.

19 BY MS. LEONARD:

20 Q. Why would you use pentobarbital, if you could
21 get it?

22 A. That --

23 MR. SUTHERLAND: The same objection.

24 THE WITNESS: Okay.

25 MR. SUTHERLAND: You can answer.

1 THE WITNESS: Other states have used it
2 successfully.

3 BY MS. LEONARD:

4 Q. Okay. And other states have also used a
5 three-drug protocol successfully; is that right?

6 A. Right.

7 Q. Okay. But you still think it would be
8 preferable to use the one-drug, pentobarbital,
9 protocol, if you could get pentobarbital?

10 A. What I can say is that we adopted a one-drug
11 protocol using pentobarbital, and we had to abandon
12 that because we were not able to obtain it.

13 Q. And when the working group made this
14 recommendation, did you make -- include in your
15 recommendation any guidance as to whether the drug
16 should be manufactured or compounded?

17 A. No.

18 Q. Why not?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: That --

21 MR. SUTHERLAND: You can answer.

22 THE WITNESS: Okay. That wasn't an
23 issue at that point.

24 BY MS. LEONARD:

25 Q. What do you mean by it was not an issue at

1 that point?

2 A. We did not consider that at all.

3 Q. Okay. So did you collect any information
4 about the differences between manufactured and
5 compounded drugs from the persons you consulted?

6 A. Not at that point, no.

7 Q. And the working group didn't do any research
8 on the difference between manufactured and
9 compounded drugs?

10 A. Not at that point.

11 Q. Okay. So the recommendation was simply for a
12 one-drug, pentobarbital, protocol?

13 A. Yes.

14 Q. No other specifications about the source of
15 the pentobarbital or the compound or anything like
16 that?

17 A. No.

18 Q. Okay. Just --

19 A. At that point it's my recollection that
20 commercially manufactured pentobarbital was
21 available.

22 Q. Okay. So it basically didn't occur to the
23 working group --

24 A. No.

25 Q. -- to look into any alternatives to that?

1 A. No.

2 Q. Was that something -- when you say that
3 you -- it was your understanding that it was
4 available, is that an understanding that you had
5 from the people you consulted?

6 MR. SUTHERLAND: Object to the form.
7 You can answer.

8 THE WITNESS: I'm -- I'm not sure
9 because that was so long ago, but my recollection is
10 availability of pentobarbital was not an issue at
11 that point.

12 BY MS. LEONARD:

13 Q. I see. Okay. So this was around, you said,
14 maybe the mid to late 2000s. What happened after
15 that?

16 A. Can you be more specific?

17 Q. Sure. When was the current protocol adopted?

18 A. I think June or July of 2017.

19 Q. And so what you're saying happened maybe 10,
20 12, 15 years before --

21 A. Uh-huh.

22 Q. -- that? What -- how many more protocols
23 were there between say the mid 2000s and you said
24 2017?

25 A. I don't know. But if there were other

1 versions, they would have been -- I don't think they
2 would have changed the chemicals used.

3 Q. So once the Commissioner turned down the
4 recommendation for the one drug, pentobarbital, and
5 he adopted a three-drug protocol, then that was up
6 until 2017?

7 A. I'm a little concerned about saying years,
8 but we had the three-drug protocol until we adopted
9 the one-drug, pentobarbital, protocol. And I'm not
10 exactly sure when that was.

11 Q. Okay. Let's -- yeah. Let me back up a
12 second. So when the Commissioner adopted a
13 three-drug protocol, what three drugs were involved
14 in that protocol?

15 A. I think at that time we still had -- I think
16 we still had sodium thiopental, and I think at that
17 time it was pancuronium bromide and potassium
18 chloride.

19 Q. Okay. So is that the same that the protocol
20 was before the working group met?

21 A. I believe so, yes.

22 Q. Okay. And you suggested that at some point
23 that changed to the one-drug, pentobarbital,
24 protocol?

25 A. Yes.

1 Q. And what prompted that change?

2 A. I think that was when sodium thiopental
3 became unavailable and other states had actually
4 used the one-drug, pentobarbital, protocol.

5 Q. Okay. And did the -- did you have a similar
6 situation where the working group got together and
7 reviewed the protocol and made this recommendation?

8 A. We didn't have a working group, but I know
9 that, you know, there were discussions among the
10 people that were -- would be involved in an
11 execution.

12 Q. And so again without identifying people by
13 name, what were the -- who were these people that
14 were involved by title or by position?

15 A. Well, obviously, it would have included the
16 Commissioner, probably the warden. Again, my memory
17 is a little vague on -- on all of that, but again
18 there -- there was no working group at that point.

19 Q. Okay. So unlike the first time around when
20 you were involved, there was no working group that
21 consulted with experts. This was more just informal
22 discussions with the people who were involved in
23 executions?

24 A. Yes. And, although, I don't recall exactly
25 but I'm sure -- you know, we always try to consult

1 with other states concerning their use of a
2 particular protocol and their experience with it.

3 Q. Okay. And do you remember what states you
4 consulted with this time?

5 A. No, I don't know. I believe Ohio was maybe
6 the first one to use pentobarbital as a one-drug
7 protocol, so we probably would have talked to them.

8 Q. Okay. So to make sure I'm understanding
9 correctly, as you see it, one of the big reasons the
10 Commissioner didn't adopt the one-drug, pento,
11 protocol when your committee recommended it was
12 because it hadn't been used in other states. And so
13 then when it was used in other states, that was what
14 prompted the change to the one-drug protocol?

15 A. Well, that and the unavailability, I think,
16 of Sodium Thiopental.

17 Q. Okay. And at that time pentobarbital was
18 available?

19 A. When we adopted it, it was.

20 Q. Okay. And how long roughly was the one-drug,
21 Pento, protocol in place?

22 A. I'm not -- I'm not sure.

23 Q. At what point did that change?

24 A. I think maybe in 2017.

25 Q. So that would have been around the time that

1 the current protocol was adopted?

2 A. I believe so. I hope I'm right on that.

3 Q. And what prompted that change?

4 A. The unavailability of pentobarbital.

5 Q. Okay. And what happened at that point? Was
6 there a working group to review the one-drug
7 protocol?

8 A. Not a working group, no.

9 Q. Who got together to discuss changing the
10 protocol this most recent time?

11 A. The Commissioner, the drug procurer, me. I
12 think that's primarily it.

13 Q. Any folks from the AG's office?

14 A. At some point I think they were involved.

15 Q. And folks from the Governor's office?

16 A. Yes. Eventually, yes.

17 Q. Okay. And roughly how many people total
18 would you say were involved in considering the move
19 from the one-drug protocol back to a three-drug
20 protocol?

21 A. Okay. Can you be more specific? Like are
22 you asking anyone that we talked to about it or
23 anyone who made a recommendation?

24 Q. Yeah. I'm just trying to understand what
25 your process was. So you indicated that a group of

1 people talked, it sounds like, internally, including
2 you and the Commissioner and the drug procurer and a
3 couple of other individuals at TDOC, and then it
4 sounds like there was some involvement from the AG's
5 office, some additional involvement from the
6 Governor's office. All and all roughly how many
7 people in those groups combined were there?

8 A. Okay. This is just going to be a really
9 rough estimate.

10 Q. Sure.

11 A. Ten.

12 Q. Okay. And then who did you consult with
13 outside of that group?

14 A. I don't -- I don't know that I personally
15 consulted with anyone outside that group.

16 Q. Did the group consult with any experts?

17 MR. SUTHERLAND: Object to the form.
18 You can answer, if you know.

19 THE WITNESS: I don't know.

20 BY MS. LEONARD:

21 Q. You don't know whether this group that you
22 were a part of consulted with any experts?

23 A. No. I can't -- I can't answer that
24 specifically. No.

25 Q. Did the group do any medical research?

1 MR. SUTHERLAND: The same objection.
2 You can answer.

3 THE WITNESS: I wasn't specifically
4 responsible for that. I think the drug procurer did
5 some consulting with outside folks.

6 BY MS. LEONARD:

7 Q. And would the outside folks include doctors?

8 MR. SUTHERLAND: Object to the form.
9 You can answer, if you know.

10 THE WITNESS: I -- I don't know.

11 BY MS. LEONARD:

12 Q. So the only time you can remember that anyone
13 at TDOC consulted with anesthesiologists or a
14 medical doctor was back a number of years ago when
15 you were considering revisions to the first sodium
16 thiopental protocol; is that right?

17 A. No. I can't say that because I don't know
18 what the drug procurer -- who the drug procurer
19 consulted with.

20 Q. Okay. Would the drug procurer be the only
21 individual who would have consulted with someone
22 outside of TDOC?

23 MR. SUTHERLAND: Object to the form.
24 You can answer, if you know.

25 THE WITNESS: I don't know that.

1 BY MS. LEONARD:

2 Q. But you personally did not?

3 A. I did not.

4 Q. Okay. And so you think the drug procurer may
5 have but you're not sure?

6 MR. SUTHERLAND: Object to the form.
7 You can answer.

8 THE WITNESS: Right. And I don't know
9 if the Commissioner did or if anyone else did.
10 That's all I can answer is I didn't.

11 BY MS. LEONARD:

12 Q. Okay. So there wasn't any sort of -- unlike
13 the time we talked about before with the working
14 group, there wasn't any sort of working group, so to
15 say -- so to speak, for this time around that did
16 the same thing, consulted with anesthesiologists,
17 and reviewed other states' protocols. There was not
18 a similar process again.

19 A. There was --

20 MR. SUTHERLAND: Object to the form.
21 You can answer.

22 THE WITNESS: Okay. There was no formal
23 working group.

24 BY MS. LEONARD:

25 Q. Okay. And so how did -- how did you arrive

1 then at the current version of the protocol?

2 MR. SUTHERLAND: Object to the form.

3 You can answer.

4 THE WITNESS: That was the
5 Commissioner's decision.

6 BY MS. LEONARD:

7 Q. And did he make that decision upon a
8 recommendation?

9 MR. SUTHERLAND: Object to the form.
10 You can answer.

11 THE WITNESS: Not a recommendation from
12 me. I think he arrived at that based on information
13 concerning the drug procurer's efforts to obtain
14 Pentobarbital.

15 BY MS. LEONARD:

16 Q. Okay. So you said you never made a
17 recommendation; is that right?

18 A. I don't think I did, no.

19 Q. Did anyone else at TDOC make a recommendation
20 to the Commissioner?

21 MR. SUTHERLAND: Object to the form.
22 You can answer.

23 THE WITNESS: Again, I think he made his
24 decision based on information from the drug procurer
25 about what was available.

1 BY MS. LEONARD:

2 Q. So you think that the drug procurer made a
3 recommendation?

4 A. I don't know that --

5 MR. SUTHERLAND: The same objection.

6 THE WITNESS: Sorry. I don't know that
7 I would call that a recommendation. It was
8 information that he provided.

9 BY MS. LEONARD:

10 Q. Okay. And you said that the Commissioner
11 made the final decision to adopt the current
12 three-drug protocol?

13 A. Right.

14 Q. Did he do that alone?

15 MR. SUTHERLAND: Object to the form.
16 You can answer.

17 THE WITNESS: Yes. As Commissioner
18 that's his decision.

19 BY MS. LEONARD:

20 Q. Okay. And is he the individual who
21 authorizes the state to conduct executions under
22 three-drug protocol?

23 MR. SUTHERLAND: Object to the form.
24 You can answer.

25 THE WITNESS: All right. Can you repeat

1 the question?

2 BY MS. LEONARD:

3 Q. Sure. Is the Commissioner the individual who
4 authorizes the state to conduct executions under the
5 three-drug protocol?

6 MR. SUTHERLAND: The same objection.

7 THE WITNESS: Okay. The Commissioner is
8 carrying out the orders of the Court. And the
9 Commissioner is under statutory authority to do that
10 by lethal injection. The Commissioner adopts the
11 lethal injection protocol. So does that answer your
12 question?

13 BY MS. LEONARD:

14 Q. Yeah. That's helpful. Thank you.

15 A. Okay.

16 Q. Is the state required to follow this
17 protocol?

18 MR. SUTHERLAND: Object to the form.
19 You can answer.

20 THE WITNESS: Yeah. To the extent -- I
21 mean, the protocol is a guideline and can't provide
22 all details, but, yes, that is our procedure.

23 BY MS. LEONARD:

24 Q. Okay. Are there any other protocols that the
25 state can follow for executions?

1 A. No. There's only one protocol.

2 Q. Is there an electrocution protocol?

3 A. Oh, yes.

4 Q. But there's only one lethal injection
5 protocol?

6 A. Right.

7 Q. So the only options in Tennessee are for
8 execution by lethal injection or execution by
9 electrocution; is that right?

10 A. Right.

11 Q. And there's a separate protocol for each of
12 those?

13 A. Right.

14 Q. So you mentioned before that you were
15 involved in some way in the creation of the lethal
16 injection execution protocol that currently exists;
17 is that right?

18 A. I had some involvement, yes.

19 Q. What type of involvement?

20 A. As legal counsel.

21 Q. And so was your -- what was your role in
22 these meetings that you mentioned earlier?

23 A. Providing legal advice.

24 Q. How many meetings roughly did you have?

25 A. When are you talking about?

1 Q. From the time when you started considering
2 the move back to the three-drug protocol until it
3 was ultimately adopted?

4 A. Well, again, there was no formal working
5 group at that point and so I don't know how many
6 meetings there might have been or how many
7 discussions.

8 Q. How many discussions would you say you were a
9 part of?

10 A. Gosh, I don't have any idea.

11 Q. Dozens?

12 A. Probably dozens, yeah, or at least a dozen.

13 Q. Okay. And you said you're not sure
14 whether -- you never consulted with any doctors; is
15 that right?

16 A. At the time we were moving from pentobarbital
17 to the three-drug --

18 Q. Uh-huh.

19 A. -- current?

20 Q. Yes.

21 A. I don't think I did personally.

22 Q. And you're not sure if anybody else did?

23 A. No. I couldn't testify to that.

24 Q. And no one ever asked you whether you thought
25 it would be a good idea for TDOC to consult with

1 experts?

2 MR. SUTHERLAND: Object to the form.

3 You can answer.

4 THE WITNESS: I don't recall that, no.

5 BY MS. LEONARD:

6 Q. But did people you were working with at TDOC
7 know that you had been a part of this earlier
8 working group?

9 A. I don't know how familiar they were with
10 that.

11 Q. Did they know that you had had previous
12 experience in developing execution protocols?

13 A. Well, obviously, they knew I've been General
14 Counsel for a long time, so they probably assumed I
15 had.

16 Q. Okay. And yet nobody asked you whether it
17 might be a good idea to consult with experts?

18 A. I don't --

19 MR. SUTHERLAND: The same objection.

20 THE WITNESS: Sorry. I don't recall
21 that specific question.

22 BY MS. LEONARD:

23 Q. Okay. And I know you said you didn't consult
24 with doctors this time around. Did you consult with
25 pharmacists?

1 A. I didn't. The drug procurer, I believe, did.

2 Q. How about pharmacologists?

3 A. I don't know.

4 Q. Did the drug procurer or anyone else consult
5 with the owner of the pharmacy that TDOC was working
6 with?

7 MR. SUTHERLAND: Object to the form.
8 You can answer.

9 THE WITNESS: I understand the drug
10 procurer did, but I don't have personal knowledge of
11 that.

12 BY MS. LEONARD:

13 Q. Okay. How about do you know whether anyone
14 spoke with a pharmacist who fills TDOC's orders for
15 drugs?

16 A. For -- can you clarify that? For what drugs?

17 Q. For lethal injection drugs?

18 A. Did anyone consult with the pharmacy that --

19 Q. The pharmacists. I'm sorry. Yes.

20 A. I believe the drug procurer did, but again I
21 don't have personal knowledge.

22 Q. Okay. So why this most recent time around,
23 when TDOC moved from the one-drug protocol back to
24 the three-drug protocol, did you not recommend
25 consulting with experts?

1 MR. SUTHERLAND: Object to the form.

2 You can answer.

3 THE WITNESS: Well, as I indicated, I
4 believe the drug procurer did consult with the
5 pharmacist. We also -- I believe the Commissioner
6 consulted with other states, who have used a similar
7 protocol. I don't recall that I was asked for a
8 recommendation about that specifically.

9 BY MS. LEONARD:

10 Q. And you never offered a recommendation having
11 had the past experience that you did?

12 A. No.

13 Q. Did you -- as a member of the working group
14 the first time around, did you find the expert
15 consultation helpful to making a recommendation?

16 A. It was sort of helpful. Yes. They were kind
17 of reluctant to be involved, and they wouldn't make
18 any recommendations. They would only answer
19 questions about, you know, pros and cons basically.

20 Q. Okay. What other sources did you consider in
21 coming up with the current iteration of the
22 protocol?

23 MR. SUTHERLAND: Object to the form.

24 You can answer.

25 THE WITNESS: I think primarily other

1 states that have used that protocol and their
2 experience and the drug procurer's discussions with
3 pharmacists.

4 BY MS. LEONARD:

5 Q. Did you read any other articles?

6 MR. SUTHERLAND: Object to the form.
7 You can answer.

8 THE WITNESS: I don't recall personally
9 whether I reviewed any articles or not.

10 BY MS. LEONARD:

11 Q. Who drafted the current iteration of the
12 protocol?

13 MR. SUTHERLAND: You can say
14 generally --

15 THE WITNESS: Okay.

16 MR. SUTHERLAND: -- without identifying
17 the person, if there is a person specifically.

18 THE WITNESS: I think -- I mean, it was
19 kind of a group effort based on the drug procurer's
20 information received from the pharmacist and
21 information received from other states.

22 BY MS. LEONARD:

23 Q. So who was part of this group effort?

24 A. The Commissioner, the drug procurer. There
25 may have been other people who reviewed it before it

1 was adopted, but that's my recollection.

2 Q. Okay. So just to be clear, so you're saying
3 that the drug procurer and the Commissioner drafted
4 the protocol?

5 MR. SUTHERLAND: Object to the form.
6 You can answer.

7 THE WITNESS: They provided input.

8 BY MS. LEONARD:

9 Q. And who actually typed up the protocol?

10 A. Typed it? I --

11 MR. SUTHERLAND: Without identifying the
12 person.

13 THE WITNESS: I probably typed it.

14 BY MS. LEONARD:

15 Q. And did you also provide input?

16 A. Not -- no, not really because I wasn't the
17 drug procurer. I had not talked to a pharmacist. I
18 was not the one who consulted with other states
19 concerning their experience using this particular
20 protocol.

21 Q. So what did you use as the basis for your
22 draft?

23 MR. SUTHERLAND: Object to the form.
24 You can answer.

25 THE WITNESS: Okay. Okay. That was

1 many years ago. I don't remember the form. I just
2 remember somehow getting the information.

3 BY MS. LEONARD:

4 Q. So the information sort of magically came to
5 you, and it resulted in the protocol we have now?

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: Not magically, no.

8 BY MS. LEONARD:

9 Q. So where did it come from?

10 A. What I just said was I don't recall
11 specifically what form it was in. I did tell you
12 who the information came from.

13 Q. And that would be the Commissioner and the
14 drug procurer?

15 A. I think so, yes, primarily.

16 Q. Did they sit there with you while you were
17 typing it up?

18 A. I don't recall.

19 Q. So did they give you notes?

20 A. I don't recall.

21 Q. Could you look at Exhibit 1 in the binder?

22 A. (Complies.)

23 Q. If you'll turn to Page 6.

24 A. (Complies.)

25 Q. Do you see the date next to the

1 Commissioner's signature there is July 5th, 2018?

2 A. Yes.

3 Q. And that's also at the bottom left-hand
4 corner of, I believe, every page of this exhibit?

5 A. Uh-huh.

6 Q. Does that refresh your recollection that the
7 protocol was adopted on July 5th, 2018?

8 MR. SUTHERLAND: Object to the form.
9 You can answer.

10 THE WITNESS: Yes.

11 BY MS. LEONARD:

12 Q. Okay. And so that was roughly three and a
13 half years ago, not quite?

14 A. Right. Yes.

15 Q. And you don't remember how you drafted this?

16 A. Not --

17 MR. SUTHERLAND: Object to the form.

18 THE WITNESS: -- specifically. Sorry.

19 BY MS. LEONARD:

20 Q. Okay.

21 A. Not specifically.

22 Q. But it wasn't based on any information that
23 you personally had?

24 A. Not any information that I personally
25 obtained from an expert.

1 Q. And you don't remember whether you had
2 someone else's notes?

3 A. No.

4 Q. And you don't remember whether someone else
5 had conversations with you about this?

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: I'm sure there were
8 conversations, but I don't remember specifically
9 what they were.

10 BY MS. LEONARD:

11 Q. Okay. But you were the person who typed up
12 this protocol; is that right?

13 A. I believe I typed it up.

14 Q. And then who reviewed the protocol after you
15 typed this up?

16 MR. SUTHERLAND: Don't identify anybody
17 by name.

18 THE WITNESS: I'm speculating a little
19 bit, but it would have included the Commissioner,
20 the drug procurer, the warden, maybe the Assistant
21 Commissioner of prisons. I don't know for sure
22 everyone that reviewed it.

23 BY MS. LEONARD:

24 Q. Did those individuals send it back to you for
25 any revisions?

1 A. I don't recall.

2 Q. Did those individuals adopt it on the spot?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: Okay. The Commissioner is
5 the only one that would adopt it.

6 BY MS. LEONARD:

7 Q. So the final decision was the Commissioner's
8 alone?

9 A. Yes.

10 Q. And were there any meetings to discuss the
11 draft of the protocol?

12 A. Not that I recall. Not the draft, no.

13 Q. Okay. So you drafted this -- it looks like
14 it's a 104-page protocol based on information that
15 you don't remember but was not personally your
16 knowledge, and then you don't recall what happened
17 to it after that other than it was adopted?

18 A. There were -- I mean, it might be a
19 hundred-page protocol, but there were, you know,
20 only specific sections that were revised.

21 Q. And which specific sections were those?

22 A. The sections concerning the chemicals used.
23 Let me look at the...

24 Q. There's a table of contents on Page 2, if
25 that's helpful.

1 A. Right. That's what I'm looking at. There
2 would be changes in Section 5.

3 Q. Okay. So the section dealing with the
4 procurement and the preparation of the chemicals?

5 A. Right.

6 Q. Were there changes to any other sections in
7 this protocol?

8 A. I don't know for sure. But it's possible
9 there could have been changes, probably not relevant
10 to this litigation, concerning titles or, you know,
11 things like that.

12 Q. Sure. Sure. But the only thing that you
13 remember changing substantively, let's say, is the
14 Section 5 --

15 A. Right.

16 Q. -- under procurement? And that was based on
17 information primarily from the drug procurer?

18 A. And the Commissioner.

19 Q. And the Commissioner. Did the drug procurer
20 draft any portions of this protocol?

21 MR. SUTHERLAND: Object to the form.
22 You can answer.

23 THE WITNESS: I don't recall if he or
24 she gave me any specific language. I just don't.
25 Yeah. I'm sorry. I don't want to say something I'm

1 not sure about.

2 BY MS. LEONARD:

3 Q. Sure. Let's go to Page 6. In the very last
4 sentence on this page it says: It will be reviewed
5 annually or as needed by a designated panel. Do you
6 see the sentence I'm looking at?

7 A. I do.

8 Q. What is this annual review?

9 A. Actually, what we do and it's -- and it's
10 really as needed, that people who would be involved
11 in the process look at it and recommend any changes
12 that are necessary. In general, you know, there
13 haven't really been many changes.

14 Q. Who were the people involved in the process?

15 MR. SUTHERLAND: Don't identify anybody
16 by name.

17 THE WITNESS: Commissioner, Assistant
18 Commissioner of prisons, the warden. I'm sure I
19 would have the drug procurer look at it, me, maybe
20 the executioner.

21 BY MS. LEONARD:

22 Q. And what's the purpose of the annual review?

23 A. Just to see --

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: -- if anything needs to be

1 changed. Sorry.

2 BY MS. LEONARD:

3 Q. And you said nothing has been changed since
4 July of 2018?

5 A. Right.

6 Q. Has the protocol been reviewed by this group
7 since 2018?

8 MR. SUTHERLAND: Object to the form.
9 You can answer.

10 THE WITNESS: Yeah. It's kind of
11 reviewed on an ongoing basis.

12 BY MS. LEONARD:

13 Q. And is this group that you just described, is
14 that what this, quote, designated panel is, as it
15 says, on Page 6?

16 A. Yes. Although, we don't, you know, come to a
17 conference room and meet together. We just
18 independently review it.

19 Q. Sure. What makes this group designated?

20 MR. SUTHERLAND: Object to the form.
21 You can answer.

22 THE WITNESS: Based on their roles.

23 BY MS. LEONARD:

24 Q. And so are they designated by the
25 Commissioner?

1 A. Yes.

2 MS. LEONARD: Okay. Do you want to take
3 a short break here?

4 MR. SUTHERLAND: Sure.

5 MS. LEONARD: I need to run to the
6 ladies room.

7 THE VIDEOGRAPHER: We are going off the
8 record. The time on the monitor is 10:11 a.m.

9 (A short break.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time on the monitor is 10:23 a.m.

12 BY MS. LEONARD:

13 Q. Who at TDOC procures the lethal drugs that
14 Tennessee uses in executions?

15 MR. SUTHERLAND: I'm going to --

16 THE WITNESS: I'm not going to answer
17 that.

18 BY MS. LEONARD:

19 Q. Not by name but by --

20 MR. SUTHERLAND: Yeah.

21 BY MS. LEONARD:

22 Q. What is the role --

23 MR. SUTHERLAND: You can -- you can --

24 BY MS. LEONARD:

25 Q. -- of the person?

1 MR. SUTHERLAND: Yeah.

2 THE WITNESS: Drug procurer.

3 BY MS. LEONARD:

4 Q. Okay. And that's the only single individual?

5 A. Yes.

6 Q. And is that the same person who looks for
7 pentobarbital?

8 A. Yes. Yes. Works with the pharmacist to
9 locate it.

10 Q. So the drug procurer works with the
11 pharmacist to locate both -- the three drugs that
12 are in the current protocol as well as
13 pentobarbital?

14 A. Right.

15 Q. Is that person involved in efforts -- equal
16 efforts to procure both the three drugs and the
17 pentobarbital?

18 MR. SUTHERLAND: Object to the form.

19 THE WITNESS: Yes.

20 BY MS. LEONARD:

21 Q. How do you know that?

22 MR. SUTHERLAND: I'm going to object to
23 the form of the question. You can answer.

24 THE WITNESS: Right. I don't have
25 personal knowledge because I'm not the one doing it,

1 but that is my understanding based upon
2 conversations with the drug procurer.

3 BY MS. LEONARD:

4 Q. Okay. And is TDOC currently able to obtain
5 pentobarbital?

6 A. No.

7 Q. Why not?

8 A. It's --

9 MR. SUTHERLAND: Object to the form.
10 You can answer.

11 THE WITNESS: Okay. It's my
12 understanding we cannot obtain it from any source.

13 BY MS. LEONARD:

14 Q. And is there a reason that these sources
15 weren't provided to you?

16 MR. SUTHERLAND: The same objection.

17 THE WITNESS: Because we're a Department
18 of Correction and use it lethal injection.

19 BY MS. LEONARD:

20 Q. But does that apply both to the manufactured
21 pentobarbital, as well as API to compound
22 pentobarbital?

23 MR. SUTHERLAND: Objection to the form.
24 You can answer.

25 THE WITNESS: It's my understanding

1 that, yes, it applies to both.

2 BY MS. LEONARD:

3 Q. This understanding comes from the drug
4 procurer, you said?

5 A. Yes.

6 Q. When's the last time that you spoke with the
7 drug procurer about this?

8 A. About this? I don't know. I speak to the
9 drug procurer on a regular basis though.

10 Q. What is a regular basis? Daily?

11 A. Daily, yeah.

12 Q. Okay. So did you talk to him about it
13 yesterday?

14 A. About this, no.

15 Q. Did you talk to him about it within the last
16 week?

17 A. About this, no.

18 Q. In the last month?

19 A. I don't recall.

20 Q. In the last three months?

21 A. Again, I don't recall. Like I said I
22 interact with the drug procurer on an almost daily
23 basis. I don't recall talking about this
24 specifically in the last few weeks.

25 Q. Okay. But it could have been within the last

1 three months?

2 MR. SUTHERLAND: Object to the form.

3 You can answer.

4 THE WITNESS: Again, I don't remember a
5 specific conversation and so I can't speculate about
6 how long ago that would have been.

7 BY MS. LEONARD:

8 Q. When's the last time that you talked with the
9 drug procurer about obtaining the three drugs that
10 are currently part of protocol?

11 MR. SUTHERLAND: Object to the form.

12 You can answer.

13 THE WITNESS: I mean, I really -- I
14 really can't recall. I can't -- I would expect the
15 drug procurer to let me know if anything changes in
16 terms of our availability to get lethal injection
17 chemicals.

18 BY MS. LEONARD:

19 Q. So you speak with the drug procurer daily or
20 at least on a regular basis you said?

21 A. On a regular basis, yes.

22 Q. But it sounds like not much about procuring
23 the lethal injection drugs?

24 A. Right.

25 MR. SUTHERLAND: Object to the form.

1 You can answer.

2 THE WITNESS: Sorry. Right. The drug
3 procurer would let me know if there's any change in
4 status.

5 BY MS. LEONARD:

6 Q. Does TDOC currently have lethal injection --
7 injection chemicals on hand to use in executions?

8 A. Not -- okay. Go ahead. Sorry.

9 MR. SUTHERLAND: Object to the form.
10 You can answer.

11 THE WITNESS: Okay. On hand -- when you
12 say "on hand", can you be more specific? Are you
13 talking about in our physical custody?

14 BY MS. LEONARD:

15 Q. Yes.

16 A. I --

17 MR. SUTHERLAND: The same objection.
18 You can answer, if you know.

19 THE WITNESS: Okay. I don't know for
20 sure if we have any on hand. The things that would
21 be compounded, we would not have on hand.

22 BY MS. LEONARD:

23 Q. Okay. And you don't know whether you have
24 any midazolam, vecuronium bromide, or potassium
25 chloride in TDOC's possession at this very moment?

1 MR. SUTHERLAND: The same objection.

2 THE WITNESS: I don't believe so, but we
3 have it available.

4 BY MS. LEONARD:

5 Q. What do you mean by "available"?

6 A. We have -- we have a pharmacist that has the
7 availability to compound midazolam and potassium
8 chloride. I can't say for sure about vecuronium
9 bromide because, I mean, that's really not my role.

10 Q. Why is -- well, let me backup. Is it your
11 role to oversee the procurement of midazolam and the
12 potassium chloride?

13 A. No.

14 Q. Then what do you mean by it's not your role
15 with respect to the vecuronium bromide?

16 A. I'm not the drug procurer. I haven't gone
17 out to the armory to see what's available. There
18 are other people who could speak more accurately as
19 to that.

20 MR. SUTHERLAND: Just -- just so the
21 record's clear, I'm going to object to any -- the
22 substance of any communications between Ms. Inglis
23 and the Department and Department personnel based on
24 attorney-client privilege that have occurred since
25 the last litigation, which would have been July of

1 2018.

2 So any -- any communications between
3 Ms. Inglis and the Commissioner, Ms. Inglis and the
4 drug procurer, I'm going to object and instruct her
5 not to answer based on attorney-client privilege
6 just so you know since the last litigation.

7 MS. LEONARD: And why? What's the
8 rationale for that?

9 MR. SUTHERLAND: Because she's chief
10 counsel for the Department.

11 MS. LEONARD: Right. But in
12 conversations where she's not providing legal
13 advice.

14 MR. SUTHERLAND: She's -- to the extent
15 that she is communicating with the client about the
16 protocol, I'm going to -- I mean, I'll listen to the
17 questions, but I'm going to be pretty -- just pretty
18 active about the conversations between her and the
19 Commissioner and conversations between her and the
20 drug procurer.

21 MS. LEONARD: Okay. I mean, I
22 understand that. I'm not -- and to be clear --

23 MR. SUTHERLAND: Just since July. Just
24 since July --

25 MS. LEONARD: Since July 2018. And to

1 be clear I'm not trying to get to the substance of
2 any legal advice that you've provided to anyone.
3 But, however, if you've had conversations or even if
4 there's portions of conversations that you've had
5 that are not about the law and not about legal
6 advice, those may come up so we'll see how it goes.

7 BY MS. LEONARD:

8 Q. Is a single-drug protocol preferable to a
9 multi-drug protocol?

10 MR. SUTHERLAND: Object to the form.
11 You can answer it, if you know.

12 THE WITNESS: If it's available, that
13 was the choice that we made, then it became
14 unavailable.

15 BY MS. LEONARD:

16 Q. I'm just asking broad strokes. Would you say
17 that a single drug is preferable to a multi-drug
18 protocol?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: A single-drug protocol is
21 more simple, if we could actually carry it out.

22 BY MS. LEONARD:

23 Q. What makes it more simple?

24 A. It's one drug.

25 Q. And so what parts of the process are simpler

1 by the fact that it's one drug?

2 MR. SUTHERLAND: The same objection.

3 THE WITNESS: Just the fact that it's
4 one drug that has to be injected.

5 BY MS. LEONARD:

6 Q. So you only have to inject one drug?

7 A. Yes.

8 Q. And you only have to procure one drug?

9 A. Yes.

10 Q. So overall that would probably be preferable
11 to three drugs?

12 MR. SUTHERLAND: Object to the form.

13 THE WITNESS: Yes, if it's available.

14 BY MS. LEONARD:

15 Q. Would two drugs be preferable to three drugs?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: I can't really answer a
18 broad question like that. It would depend on what
19 drugs we're talking about and if any other state had
20 used it and had experience with it.

21 BY MS. LEONARD:

22 Q. Would two drugs be simpler than three drugs?

23 MR. SUTHERLAND: The same objection.

24 THE WITNESS: Simpler. That's not the
25 only consideration though.

1 BY MS. LEONARD:

2 Q. Sure, but simpler in the same way that we
3 just talked about with one versus three, right,
4 so --

5 A. Again --

6 MR. SUTHERLAND: The same objection.

7 THE WITNESS: -- but that's not the only
8 consideration.

9 BY MS. LEONARD:

10 Q. Sure.

11 MR. SUTHERLAND: Yeah. Let me -- just
12 if you can give me just like one second --

13 THE WITNESS: I'm sorry.

14 MR. SUTHERLAND: -- because I don't want
15 to interrupt you and --

16 THE WITNESS: I'll do that.

17 MR. SUTHERLAND: -- to make sure the
18 record is clear. I apologize.

19 BY MS. LEONARD:

20 Q. What would happen if TDOC did not use a
21 paralytic?

22 MR. SUTHERLAND: Objection to the form.
23 You can answer, if you know.

24 THE WITNESS: Okay. It would
25 probably -- the paralytic speeds up death by

1 stopping respiration, so that would happen. But no
2 one has used a two-drug protocol not using a
3 paralytic that I'm aware of, and so we really don't
4 know what would happen.

5 BY MS. LEONARD:

6 Q. Sorry. So when you say that it speeds up
7 death by stopping breathing, that would happen, what
8 do you mean "that would happen"?

9 MR. SUTHERLAND: The same objection.

10 THE WITNESS: I said it would speed up
11 death.

12 BY MS. LEONARD:

13 Q. And so if you did not use it, what would
14 happen?

15 A. It could be a slower death. But, again, we
16 -- the primary thing is no one's ever used it so we
17 really are not -- don't know exactly what would
18 happen.

19 Q. Have you ever consulted any experts on what
20 would happen?

21 A. I can't recall for sure if we consulted on
22 that specific topic when we had the working group
23 that was going on but certainly not recently.

24 Q. What makes you think that the paralytic
25 speeds up death?

1 MR. SUTHERLAND: Object to the form.

2 You can answer, if you know.

3 THE WITNESS: Okay. I definitely have
4 no medical expertise. It's my understanding that as
5 part of the paralytic, it stops your respiration.

6 BY MS. LEONARD:

7 Q. Where did that understanding come from?

8 MR. SUTHERLAND: Don't identify anybody
9 by name, if there is someone.

10 THE WITNESS: Yeah. I can't say
11 specifically where that came from. Just, you know,
12 through the years of doing this I'm aware of, you
13 know, that the second drug is a paralytic, and that
14 that's one aspect of what it does to the body.

15 BY MS. LEONARD:

16 Q. But you -- you don't know why it is you think
17 that?

18 MR. SUTHERLAND: The same objection.

19 THE WITNESS: Yeah. I can't say
20 specifically where I learned that.

21 BY MS. LEONARD:

22 Q. And you've never had any medical training?

23 A. Right.

24 Q. And you've never witnessed an execution live?

25 A. Not --

1 MR. SUTHERLAND: Object to the form.

2 You can answer.

3 THE WITNESS: Okay. I've never been in
4 a witness room observing an execution. I have seen
5 one over closed-circuit TV.

6 BY MS. LEONARD:

7 Q. If an expert told you that a paralytic would
8 not slow down death, would that change your opinion?

9 MR. SUTHERLAND: Object to the form.
10 You can answer.

11 THE WITNESS: Yeah. I can't really
12 answer that. It would depend on what other experts
13 said.

14 BY MS. LEONARD:

15 Q. But you've never consulted experts on this
16 issue?

17 A. I haven't personally.

18 Q. Has anyone else in TDOC consulted experts on
19 this issue?

20 MR. SUTHERLAND: Object to the form.

21 THE WITNESS: I don't know.

22 BY MS. LEONARD:

23 Q. You suggested that a one-drug protocol is
24 simpler than a three-drug protocol. Does simpler
25 mean it's better?

1 A. No.

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: Sorry.

4 MR. SUTHERLAND: Just pause for just a
5 minute, please.

6 THE WITNESS: I will. I'm sorry.

7 MR. SUTHERLAND: That's okay.

8 THE WITNESS: No. I can't say that that
9 means it's better.

10 BY MS. LEONARD:

11 Q. Why not?

12 MR. SUTHERLAND: The same objection.

13 THE WITNESS: Simpler isn't always
14 better.

15 BY MS. LEONARD:

16 Q. Is -- is a three-drug protocol more
17 complicated than a one-drug protocol?

18 MR. SUTHERLAND: Object to the form.
19 You can answer.

20 THE WITNESS: There are more steps, but
21 we've had experience with the three-drug protocol
22 and many other states have, also. So the -- you
23 know, the driving consideration is not it being the
24 most simple that we can come up with.

25

1 BY MS. LEONARD:

2 Q. What's the driving consideration?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: Driving consideration is
5 just making sure that we have a protocol that's been
6 tested. It's been successful, and we know what to
7 expect with it.

8 BY MS. LEONARD:

9 Q. So do you defer to other states' experience
10 more than expert advice?

11 MR. SUTHERLAND: Object to the form.

12 THE WITNESS: I'm not saying that we
13 defer. We consider experts, I'm sure, and also
14 firsthand experience from other states.

15 BY MS. LEONARD:

16 Q. But you've never witnessed an execution in
17 another state?

18 A. I haven't, no.

19 Q. And you don't recall whether you have --
20 well, scratch that. You have not spoken with any
21 experts about this particular protocol?

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: I haven't personally
24 spoken to an expert on this.

25 / /

1 BY MS. LEONARD:

2 Q. And you're not sure whether others have?

3 MR. SUTHERLAND: The same objection.

4 THE WITNESS: I can't -- yeah. I can't
5 say specifically. I know we're aware of there being
6 there expert testimony out there that does support
7 the three-drug protocol, but I can't say who else
8 may have consulted an expert; and I haven't
9 consulted an expert.

10 BY MS. LEONARD:

11 Q. Okay. Since the current protocol was put in
12 place, have any prisoners opted to be executed by
13 electrocution rather than lethal injection?

14 A. Yes.

15 Q. How many?

16 A. I don't have a number in my head right now.

17 A few.

18 Q. Did you speak with any of those prisoners
19 about that choice?

20 A. No.

21 Q. Do you know why they made that choice?

22 A. I have no personal knowledge about why they
23 made that choice.

24 Q. Did you witness those executions through the
25 closed-circuit TV?

1 A. Yes.

2 Q. And what did you see during those executions?

3 MR. SUTHERLAND: Object to the form, and
4 I'm going to instruct the witness not to answer. It
5 has nothing to do with the litigation. The
6 electrocution protocol is not at issue in this case.

7 MS. LEONARD: No, but the
8 constitutionality of the lethal injection protocol
9 is.

10 MR. SUTHERLAND: You can ask her what
11 she observed in the others, but we're not going to
12 talk about -- it is not an alternative that you-all
13 have pled, and so we're not going to talk about
14 protocols that aren't apart of this, just like we're
15 not talking about sodium thiopental.

16 MS. LEONARD: We might. We haven't got
17 there yet.

18 MR. SUTHERLAND: I'm going to instruct
19 the witness not to answer questions about the
20 electrocution protocol.

21 MS. LEONARD: On the basis of relevance?

22 MR. SUTHERLAND: Yes. It has nothing to
23 do with it.

24 MS. LEONARD: I don't think that's a
25 proper objection in a deposition.

1 MR. SUTHERLAND: Okay. Well, you can
2 note -- note it. We're not going to talk about
3 electrocution.

4 MS. LEONARD: Let's take a break for a
5 second.

6 MR. SUTHERLAND: Sure.

7 THE VIDEOGRAPHER: We are going off the
8 record. The time is 10:41 a.m.

9 (A short break.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time is 10:49 a.m.

12 MR. SUTHERLAND: Do you want to --

13 MS. LEONARD: Sure. If you want to put
14 on the record what we just talked about.

15 MR. SUTHERLAND: Yeah. So the question
16 to Ms. Inglis was what did she observe in an
17 electrocution execution, and we object because the
18 Legislature by statute has limited witnesses to
19 executions for a number of reasons, one of which
20 would be to protect the confidentiality and
21 integrity of the execution process and because in
22 this instance the question has to do with the
23 protocol that has nothing to do with this litigation
24 and so we would -- I would instruct Ms. Inglis not
25 to answer the question, and we just indicated we

1 would seek a protective order if -- to prohibit the
2 disclosure, if necessary.

3 MS. LEONARD: And I'll put on the record
4 for now that our position is that Ms. Inglis has
5 already testified that she has witnessed these
6 executions, and not only that, but she has not done
7 that as one of the official witnesses, as it were,
8 but rather as a participant by closed-circuit TV,
9 not in the witness room --

10 MR. SUTHERLAND: I understand.

11 MS. LEONARD: -- among other things, but
12 we may -- might circle back to this later but for
13 now let's move forward, I think.

14 BY MS. LEONARD:

15 Q. Could you turn to Exhibit 14, Ms. Inglis,
16 1-4.

17 A. (Complies.)

18 Q. Do you see these are handwritten notes?

19 A. Correct.

20 Q. Have you seen these notes before?

21 A. I may have. I don't recall specifically.

22 Q. Did you write these notes?

23 A. No, I did not.

24 Q. This is not your handwriting?

25 A. No.

1 Q. Did you discuss these notes with anyone?

2 A. Not that I recall.

3 Q. Would it surprise you to hear that the drug
4 procurer said that he wrote these notes?

5 MR. SUTHERLAND: Object to the form.
6 You can answer.

7 THE WITNESS: It wouldn't surprise me.
8 I just don't know if the drug procurer did write
9 these notes.

10 BY MS. LEONARD:

11 Q. Okay. I see. Let's go to Exhibit 16. Do
12 you see this is a PowerPoint presentation?

13 A. Correct.

14 Q. Are you familiar with this PowerPoint?

15 A. I've seen it, yes.

16 Q. Who created this PowerPoint?

17 MR. SUTHERLAND: Don't identify anybody,
18 if you know by name who it is.

19 THE WITNESS: The drug procurer.

20 BY MS. LEONARD:

21 Q. Did you instruct the drug procurer to create
22 it?

23 A. I did not.

24 Q. Who instructed the drug procurer to create
25 this?

1 MR. SUTHERLAND: I object to the form
2 and don't identify anybody by name.

3 THE WITNESS: I don't know.

4 BY MS. LEONARD:

5 Q. Why was this PowerPoint created?

6 MR. SUTHERLAND: Object to the form.
7 You can answer.

8 THE WITNESS: It was created to do a
9 presentation to the Governor's office.

10 BY MS. LEONARD:

11 Q. And what was the subject of that
12 presentation?

13 MR. SUTHERLAND: Object to the form.
14 You can answer.

15 THE WITNESS: To talk about -- to brief
16 the Governor on the current state of the
17 Department's ability to carry out a lethal
18 injection.

19 BY MS. LEONARD:

20 Q. Who was this PowerPoint presented to?

21 MR. SUTHERLAND: I guess I don't have a
22 problem identifying -- I don't want to -- let's just
23 not identify specific individuals that were present.
24 We can talk about roles or positions or whatever of
25 people that were present, if that's what you're

1 asking.

2 BY MS. LEONARD:

3 Q. Yeah. I don't need specific names, but who
4 was the audience generally for this?

5 A. Folks from the Governor's office, folks from
6 TDOC, folks from the Attorney General's office.

7 Q. Anyone else?

8 A. Not that I recall.

9 Q. Was this PowerPoint used during any other
10 presentations?

11 A. Not to my knowledge.

12 Q. When did that presentation take place?

13 MR. SUTHERLAND: Object to the form.
14 You can answer.

15 THE WITNESS: I'm assuming it's
16 August 31st, 2017, because that's what's on the
17 PowerPoint.

18 BY MS. LEONARD:

19 Q. Is that the date it was presented or the date
20 it was created?

21 MR. SUTHERLAND: Object to the form.

22 THE WITNESS: I don't know.

23 MR. SUTHERLAND: You can answer. Go
24 ahead.

25 THE WITNESS: Sorry. I don't know.

1 BY MS. LEONARD:

2 Q. Okay. Who presented this PowerPoint?

3 MR. SUTHERLAND: Don't identify anybody
4 by name.

5 THE WITNESS: The Department generally.

6 BY MS. LEONARD:

7 Q. Did multiple people present it?

8 A. It's kind of hard to answer. I mean,
9 everyone that was in the meeting participated.

10 Q. So who -- when you say the Department
11 presented this, what individual or individuals
12 presented this on behalf of the Department without
13 giving me that individual or individuals' names?

14 A. I don't recall whether -- you know, who was
15 leading the discussion, whether it was the
16 Commissioner, the drug procurer, or someone else.

17 Q. Did you present this?

18 A. I did not.

19 Q. Did the drug procurer present this?

20 MR. SUTHERLAND: Object to the form.
21 You can answer.

22 THE WITNESS: I already indicated that I
23 didn't recall whether it was the Commissioner or the
24 drug procurer or someone else.

25 / /

1 BY MS. LEONARD:

2 Q. But you were present at this presentation?

3 A. I was.

4 Q. Have Tennessee's execution protocols changed
5 since this PowerPoint was created?

6 A. Yes.

7 Q. In what way?

8 A. We went to a three-drug protocol using
9 midazolam, vecuronium bromide, and potassium
10 chloride.

11 Q. So what was the protocol that was in place at
12 the time this PowerPoint was created?

13 A. It was pentobarbital.

14 Q. Okay. When this was presented, did you
15 recommend the three-drug protocol to replace the
16 one-drug protocol?

17 A. I did not make that recommendation in this
18 meeting.

19 Q. Did the drug procurer make that
20 recommendation?

21 MR. SUTHERLAND: Object to the form.

22 You can answer.

23 THE WITNESS: I don't recall. I mean, I
24 think -- based on my memory the Department presented
25 the facts that are set out in this PowerPoint. I'm

1 not sure whether there was a recommendation, but
2 there were certainly a clear indication to the
3 Governor that we were not going to be able to carry
4 out an execution using pentobarbital.

5 BY MS. LEONARD:

6 Q. Was that indication the purpose of presenting
7 this PowerPoint?

8 A. The purpose was to inform the Governor of our
9 current state relative to our ability to carry out
10 an execution.

11 Q. Did you discuss this PowerPoint with the drug
12 procurer before it was presented?

13 A. I don't recall having a discussion, no.

14 Q. Did you see this PowerPoint before it was
15 presented?

16 A. I think I did, yes.

17 Q. Did you give any input into the content of
18 this PowerPoint?

19 A. I don't recall whether I recommended any
20 revisions or not.

21 Q. Okay. Let's turn to Page 8.

22 A. (Complies.)

23 Q. I'll just give you a minute to review this.

24 You didn't review this in preparation for the

25 deposition today, right?

1 A. I did not.

2 Q. I'll just give you a minute to refresh
3 yourself on it.

4 MR. SUTHERLAND: Is this like the Bates
5 Number 00000 --

6 MS. LEONARD: Yes. Yes.

7 MR. SUTHERLAND: Oh, I see.

8 MS. LEONARD: Yeah. They match up
9 fortunately.

10 THE WITNESS: (Reviewing document.)
11 Okay.

12 BY MS. LEONARD:

13 Q. Does the redacted portion here refer to a
14 state?

15 MR. SUTHERLAND: Object to the extent
16 that it would identify any particular state but to
17 say state or other entity is fine.

18 BY MS. LEONARD:

19 Q. It's just a yes or no question.

20 A. Yes.

21 Q. So the second sentence of this says:
22 Redacted was also unwilling to offer any guidance as
23 to how redacted was able to find its current source.
24 Do both of those redactions in the same sentence --
25 in that sentence refer to the same entity?

1 MR. SUTHERLAND: Object to the form.

2 You can answer, if you know.

3 THE WITNESS: Well, to be honest I'd
4 have to see the un-redacted portion. But as I read
5 this, I would expect that it's the same.

6 BY MS. LEONARD:

7 Q. Okay. And did that entity share why it was
8 unwilling to offer that guidance?

9 MR. SUTHERLAND: Object to the form.
10 You can answer, if you know.

11 THE WITNESS: I don't -- I don't know if
12 they specifically shared why, but my experience has
13 been that no state wants to jeopardize any source
14 that they might have.

15 BY MS. LEONARD:

16 Q. And what do you mean by "jeopardize"?

17 MR. SUTHERLAND: Object to the form.

18 THE WITNESS: They want to protect their
19 source from any possible disclosure.

20 BY MS. LEONARD:

21 Q. Okay. You've mentioned a couple times
22 discussions with other states that use lethal
23 injection, and it sounds like that's been a source
24 of this -- much of the information that you have; is
25 that right?

1 MR. SUTHERLAND: Object to the form.

2 You can answer.

3 THE WITNESS: Okay. Yes, quite a bit.

4 BY MS. LEONARD:

5 Q. What states currently have a supply of
6 pentobarbital that they use for executions?

7 MR. SUTHERLAND: Object to the form.

8 You can answer, if you have knowledge.

9 MS. LEONARD: I'm just going to put on
10 the record, Ms. Inglis is a lawyer. And she knows,
11 you know, we've agreed that it's objections to form
12 so if you can please let out the "if you know" or if
13 the whatever. She knows that if you say objection
14 to form, she's allowed to answer unless the basis is
15 privileged.

16 THE WITNESS: He is representing me, so
17 I appreciate any interjection he has. Do you have a
18 problem --

19 MS. LEONARD: That's fine.

20 MR. SUTHERLAND: I note your --

21 MS. LEONARD: Yeah. I just -- I don't
22 really appreciate the speaking objection is what I'm
23 trying to get on the record.

24 MR. SUTHERLAND: Understood.

25 MS. LEONARD: I think that she's clear

1 on what she can and can't answer.

2 MR. SUTHERLAND: I understand. You can
3 answer.

4 THE WITNESS: Okay. Can you repeat the
5 question?

6 BY MS. LEONARD:

7 Q. Sure. What states currently have a supply of
8 pentobarbital that they use in executions?

9 A. I don't know the current state of each
10 state's supply of pentobarbital.

11 Q. What states currently have a pentobarbital
12 protocol?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Okay. I believe Texas is
15 using pentobarbital. I don't know if they have a
16 current supply, and I believe the Bureau of Prisons
17 has a protocol using pentobarbital. But, again, I
18 don't know what their supply is and where they
19 obtained it. Those are the only two that come to
20 mind.

21 BY MS. LEONARD:

22 Q. Are there any other states that use
23 Pentobarbital in executions?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: Okay. Yes. I indicated

1 those are the only two that I -- that come to mind
2 today.

3 BY MS. LEONARD:

4 Q. So when you testified previously that you've
5 talked with other states that use this protocol,
6 it's fair to assume that's only Texas and the BOP?

7 MR. SUTHERLAND: Object to the form.
8 You can answer.

9 THE WITNESS: Okay. I believe when I
10 mentioned that, that had to do with using midazolam.

11 BY MS. LEONARD:

12 Q. Okay. So who uses midazolam?

13 A. I don't know every state, and I haven't
14 personally contacted every state. It's my
15 understanding the Commissioner has talked to a
16 number of people. Virginia is one, and I can't
17 recall exactly which -- which states he might have
18 talked to but I --

19 Q. And I believe you testified earlier that
20 there were something like five states --

21 MR. SUTHERLAND: Object to the form.

22 BY MS. LEONARD:

23 Q. -- that you talked to, but the only one you
24 can remember, that you think was in reference to
25 midazolam, was Virginia?

1 A. I don't recall testifying to that. Maybe you
2 can refresh my memory.

3 Q. Maybe you could refresh mine actually. So
4 who -- when you -- did you talk to other states when
5 you were coming up with the midazolam protocol?

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: Okay. Let me -- let me
8 think. I don't recall that I did personally. I
9 know the Commissioner or I understand the
10 Commissioner talked to several other commissioners.

11 BY MS. LEONARD:

12 Q. How many is "several"?

13 A. I don't know.

14 Q. A ballpark figure?

15 A. I don't know.

16 Q. Two?

17 A. I don't know.

18 MR. SUTHERLAND: Object to the form.

19 BY MS. LEONARD:

20 Q. So you don't -- you don't know the source of
21 the Commissioner's information?

22 A. I think you would have to ask the
23 Commissioner that.

24 Q. Was this the information that you used to
25 draft the protocol?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: Yes. It was the decision
3 of the Commissioner, and I think that was the basis
4 of his information.

5 BY MS. LEONARD:

6 Q. Sure. I understand it was his decision.

7 A. Okay.

8 Q. But I'm asking what information did you use
9 to draft the protocol?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: I looked at some other
12 states' protocols or we did and again right now --

13 MR. SUTHERLAND: I interject. Are you
14 asking her what you did or are you asking her what
15 TDOC did?

16 MS. LEONARD: I'm asking her what she
17 did.

18 MR. SUTHERLAND: Okay.

19 THE WITNESS: I'm trying to remember if
20 I personally called any state about their protocol.
21 I don't think so, but I know that we had access to
22 other protocols.

23 BY MS. LEONARD:

24 Q. Did you read other states' protocols?

25 A. I'm sure I did. I don't know particularly

1 what states.

2 Q. Did you read one-drug protocols?

3 A. I have in the past.

4 Q. Which ones?

5 A. Ohio's when they had pentobarbital as a
6 single drug.

7 Q. Is that it?

8 A. That's all I can recall right now.

9 Q. And what three-drug protocols have you read?

10 A. Gosh, I don't -- I'm not going to be able to
11 know -- to recall exactly which states. And I know
12 that in drafting this, we also had access to the
13 recommendation from the former pharmacy owner.

14 Q. Recommendations as to what?

15 A. The --

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: Okay. The particular
18 protocol.

19 BY MS. LEONARD:

20 Q. The particular protocol that that person
21 thought that TDOC should be using?

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: That -- yeah. That --
24 yeah, that indicated that this is what has been used
25 in other states.

1 BY MS. LEONARD:

2 Q. Okay. Did you discuss execution protocols
3 with anyone in other states?

4 MR. SUTHERLAND: Object to the form.

5 THE WITNESS: Through the years I'm sure
6 I have. I don't know that -- I don't remember
7 discussing with other states in particular when we
8 adopted the current protocol.

9 BY MS. LEONARD:

10 Q. Have you ever visited other states to see
11 their execution facilities?

12 A. Yes.

13 Q. Which states?

14 A. Virginia and the Bureau of Prisons.

15 Q. When did you visit those places?

16 A. Years ago.

17 Q. How many years ago roughly?

18 A. Oh, it was quite a while ago. It might have
19 been while the committee was functioning.

20 Q. Which committee?

21 A. The one we've discussed that reviewed various
22 options, talked to some anesthesiologists and some
23 other folks. I think it was probably during that
24 process.

25 Q. What was Virginia's protocol at that time?

1 A. It was -- it was far enough back that I
2 believe it was sodium thiopental.

3 Q. Three-drug protocols beginning with sodium
4 thiopental?

5 A. I believe so.

6 Q. And what was the BOP's protocol at that time?

7 A. I think it was the same.

8 Q. And that was also around the same time that
9 you visited their facilities?

10 A. I think so.

11 Q. And that's at Terre Haute?

12 A. Yes.

13 Q. Have other states ever visited here to see
14 Tennessee's facilities?

15 A. I haven't been involved in any visits, but
16 something in the back of my mind thinks that some
17 state has visited. I don't know if it was --
18 probably not the Bureau of Prisons. It might have
19 been the military. But, again, I wasn't involved in
20 that, and I can't be any more specific about that.

21 Q. Would you have been informed about that visit
22 in either of your roles as General Counsel or Deputy
23 Commissioner?

24 A. I wouldn't have had to -- well, again, this
25 was a while back, and I don't have specific memory.

1 But I would expect that someone in my role as
2 General Counsel would have told me that that was
3 going to happen and asked if that was okay.

4 Q. Okay.

5 A. Again, that's a very, very vague
6 recollection.

7 Q. Have you reached out to any of the states
8 currently using pentobarbital since this PowerPoint
9 was created?

10 MR. SUTHERLAND: Object to the form and
11 don't identify any state.

12 THE WITNESS: I think it was probably
13 before the PowerPoint was prepared, but I have, you
14 know, reached out to some states.

15 BY MS. LEONARD:

16 Q. I'm sorry. I didn't want to interrupt you.

17 A. I mean, I do -- I have talked to a few
18 states. Whether it was before or after, I think it
19 was probably before, and then I think I've made at
20 least one contact since then.

21 Q. Since the time of PowerPoint?

22 A. Yes.

23 Q. Okay. And when you say "a few states",
24 roughly how many states did you contact?

25 A. Well, I know one for sure. I'm trying to

1 think if there's -- probably -- maybe three.

2 Q. And were all three of those states using
3 pentobarbital?

4 A. If it's three, then yes. One for sure, and
5 then another jurisdiction after that. I think maybe
6 there were two more that I thought might have a lead
7 on pentobarbital.

8 Q. And you contacted those after the date of
9 this presentation or you're saying -- just to make
10 sure I'm clear, you're saying you only had one
11 contact since then?

12 A. Yes. I think I personally have only had one
13 contact since then.

14 Q. Okay. And is that -- was that contact with a
15 state that's currently using pentobarbital for their
16 executions?

17 A. A jurisdiction that's using pentobarbital.

18 Q. Okay. And in total what you're saying not
19 limiting it to the time frame after this
20 presentation, you think you've had conversations
21 with three?

22 A. Yeah.

23 Q. Okay. And you don't know what states
24 currently use pentobarbital in their executions
25 other than Texas and the Federal BOP?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: Okay. No. I can't say
3 sitting here today that I know.

4 BY MS. LEONARD:

5 Q. But you do know that the other two states
6 that you reached out to use pentobarbital?

7 A. At that time --

8 MR. SUTHERLAND: Object to the form --

9 THE WITNESS: -- they did. I'm sorry.

10 BY MS. LEONARD:

11 Q. Okay. Have you ever contacted Missouri about
12 pentobarbital?

13 A. I don't believe I have.

14 Q. Have you contacted South Dakota about
15 pentobarbital?

16 A. I haven't personally.

17 Q. Have you contacted --

18 MR. SUTHERLAND: I'm going to object and
19 not get into specific states that she has contacted.

20 MS. LEONARD: And what's the basis for
21 that?

22 MR. SUTHERLAND: Information concerning
23 possible sources of pentobarbital.

24 MS. LEONARD: I don't know how the exact
25 state is going to get into sources.

1 MR. SUTHERLAND: I mean, she can tell
2 you that there are states, but I'm not going let her
3 answer questions about specific people the
4 Department has contacted in trying to obtain lethal
5 injection chemicals.

6 MS. LEONARD: I'm not asking about
7 specific people to be clear.

8 MR. SUTHERLAND: I understand. She
9 can -- I will -- I will say she can tell -- she can
10 testify about that she contacted states, but I'm
11 going to instruct her not to identify specific
12 states because of the Court's protective order.

13 MS. LEONARD: All right. We may circle
14 back to that, too.

15 BY MS. LEONARD:

16 Q. Let's go to Page 9.

17 A. (Complies.)

18 Q. The last bullet point on this page says:
19 Search involved cold calling US based active
20 pharmaceutical ingredient, API, supply companies.
21 Who, without giving me a name, was responsible for
22 making these cold calls?

23 A. That would have been the drug procurer.

24 Q. What was the result of those calls?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: They were unsuccessful.

2 BY MS. LEONARD:

3 Q. Were any non US based API supply companies
4 contacted?

5 MR. SUTHERLAND: Object to the form.

6 THE WITNESS: I don't know personally.

7 BY MS. LEONARD:

8 Q. You wouldn't have been informed about that?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: What I can say is that I
11 don't have any information about that.

12 BY MS. LEONARD:

13 Q. Okay. So you never spoke with the drug
14 procurer about whether the drug procurer reached out
15 to non US based API companies?

16 A. I don't know if the drug procurer did that
17 specifically. I don't think we had that discussion.

18 Q. And do you see in the previous bullet point
19 the second sentence says: Finally a compounding
20 pharmacy agreed to both compound the LIC and aide in
21 the search for a source. What is your understanding
22 of how that compounding pharmacy searches for
23 Midazolam?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: I can't get into

1 specifics. I didn't have any discussions with that
2 compounding pharmacy, but my understanding would be
3 that they use their -- the sources that they
4 generally use, the major drug companies around the
5 country. But, again, I am not -- I didn't have any
6 discussions with the pharmacy.

7 BY MS. LEONARD:

8 Q. You've never communicated directly with a
9 compounding pharmacy about how they search for
10 midazolam?

11 A. No.

12 Q. Have you communicated with the compounding
13 pharmacy about how they search for vecuronium
14 bromide?

15 A. No, I have not.

16 Q. How about potassium chloride?

17 A. No.

18 Q. So what is your understanding of how they
19 search for vecuronium bromide?

20 A. It would be --

21 MR. SUTHERLAND: Object to the form.

22 THE WITNESS: Okay. Again, I don't
23 know, but that's -- it would be the same answer.

24 BY MS. LEONARD:

25 Q. And is that also the same answer for the

1 potassium chloride?

2 A. Yes.

3 Q. How does this compounding pharmacy search for
4 pentobarbital?

5 MR. SUTHERLAND: Object to the form.

6 THE WITNESS: Again, I haven't had
7 discussions with the compounding pharmacy. So I
8 think -- I would assume they use their regular
9 sources, but I don't know.

10 BY MS. LEONARD:

11 Q. Are you aware that the pharmacist who
12 compounds the drugs has been disciplined by the
13 State Board of Pharmacy?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: Yes.

16 BY MS. LEONARD:

17 Q. Are you aware that the pharmacy that supplies
18 TDOC with its lethal injection drugs was disciplined
19 for providing false information in its application
20 for a pharmacy license?

21 A. Yes.

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: I'm sorry.

24 BY MS. LEONARD:

25 Q. Are you aware that the laboratory that the

1 pharmacy uses to test the drugs has been issued a
2 violation letter?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: No.

5 BY MS. LEONARD:

6 Q. On Page 10 the first sentence reads:
7 Collectively contact was made with close to 100
8 potential sources, including the three major US
9 chemical wholesalers. None of these worked for one
10 or more of the following reasons, and then the
11 bullet points cover those reasons. How many
12 individuals at TDOC were involved in making these
13 contacts?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: I think there was one
16 person, the drug procurer, that this is discussing.

17 BY MS. LEONARD:

18 Q. Do you have any records documenting those
19 contacts with these sources?

20 A. I don't.

21 Q. Does TDOC have any of these records?

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: There were, you know,
24 probably, but that would have been something that
25 had been turned over in discovery.

1 MS. LEONARD: Okay. Well, to the extent
2 there's any outstanding records about these
3 contacts, we would request those, too.

4 MR. SUTHERLAND: (Nods head.)

5 BY MS. LEONARD:

6 Q. Did you review the discovery in this case?

7 A. No, not...

8 Q. So what makes you think that it would have --
9 these records would have been turned over in
10 discovery already?

11 A. That's my expectation.

12 Q. Fair enough. When this says contact was made
13 with close to 100 potential sources, were all of
14 those sources based in the US?

15 MR. SUTHERLAND: Object to the form.

16 THE WITNESS: I don't know.

17 BY MS. LEONARD:

18 Q. Did you ever ask the drug procurer about
19 that?

20 A. No.

21 Q. And the drug procurer never volunteered that
22 to you?

23 A. No.

24 Q. Did you ever talk with other states about
25 whether they were importing pentobarbital from

1 overseas?

2 A. Not that I recall, no.

3 Q. One of the reasons on this page that these
4 sources didn't work out says that some of the
5 companies, quote, did not have sufficient quantities
6 of the needed form of pentobarbital. Do you see
7 that in the second bullet point?

8 A. Uh-huh.

9 Q. Does that mean that you were only willing to
10 purchase pentobarbital if the company had it in a
11 threshold quantity?

12 A. No.

13 Q. What does that bullet point mean?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: When we were searching, of
16 course, you know, we indicated that we would be
17 willing to purchase a certain amount. But that
18 doesn't mean that we wouldn't have taken, you know,
19 a lesser amount. But it had to be enough at least
20 for one execution.

21 BY MS. LEONARD:

22 Q. How much is that?

23 A. That's --

24 MR. SUTHERLAND: Object to the form.

25 You can answer.

1 THE WITNESS: For pentobarbital I would
2 have to, you know, look back at that particular
3 protocol, but I think it might have been
4 500 milligrams.

5 BY MS. LEONARD:

6 Q. Okay. Then on Page 11 the PowerPoint says --
7 in the first sentence, that the search was broadened
8 into the possibility of importing the chemical from
9 overseas. At what point was the search broadened in
10 this matter?

11 A. I don't recall.

12 Q. How was the search broadened?

13 MR. SUTHERLAND: Object to the form.

14 THE WITNESS: I don't know. That would
15 be a question for the drug procurer.

16 BY MS. LEONARD:

17 Q. You never discussed that with the drug
18 procurer?

19 A. No.

20 Q. You didn't give him any instructions
21 regarding the search?

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: I didn't give the drug
24 procurer any instructions about that.

25 / /

1 BY MS. LEONARD:

2 Q. How many suppliers were contacted?

3 MR. SUTHERLAND: The same objection.

4 THE WITNESS: Again, I don't know.

5 BY MS. LEONARD:

6 Q. Did any of the oversea suppliers tell TDOC
7 that they were willing to supply the API for
8 pentobarbital?

9 A. Again, I don't know.

10 Q. You wouldn't have been told this information?

11 A. I wasn't.

12 Q. And you never asked anybody about this
13 information?

14 A. No.

15 Q. On Page 12 in the second bullet point it
16 reads: After meeting the agents informed redacted
17 that redacted because according to them, there is a
18 supply of pentobarbital available in the United
19 States. And then there's a bullet point after that
20 that I'll give you a minute to read.

21 A. (Reviewing document.) Okay.

22 Q. Can you tell me what the last bullet point
23 means?

24 MR. SUTHERLAND: Object to the form.

25 You can answer.

1 THE WITNESS: Okay. I believe that it
2 means that in terms of the law pertaining to
3 importation of drugs, it's not relevant that we
4 could not obtain pentobarbital for use in an
5 execution because it was otherwise available, you
6 know, for example in a hospital setting.

7 BY MS. LEONARD:

8 Q. Did you -- well, let me ask you: In the
9 first bullet point, what's redacted there? Who's in
10 the redaction, the agents informed?

11 MR. SUTHERLAND: I'm sorry. Are you
12 asking for a specific --

13 BY MS. LEONARD:

14 Q. Not the name, just what is the entity or
15 individual or what is it that's -- the agents
16 informed blank?

17 MR. SUTHERLAND: Yeah. You can
18 generally describe it, if you know.

19 THE WITNESS: I believe that that was
20 the former pharmacy owner.

21 BY MS. LEONARD:

22 Q. Did you ask the former pharmacy owner about
23 his discussion with the DEA?

24 A. I did not.

25 Q. Did anyone else at TDOC ask him about that?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: I'm pretty sure the drug
3 procurer did.

4 BY MS. LEONARD:

5 Q. And did the drug procurer talk with you about
6 that?

7 A. I know -- I know that he made me aware of
8 that meeting.

9 Q. What did he tell you about the meeting?

10 A. Just basically what's here.

11 Q. So why was the statement included in the
12 PowerPoint?

13 MR. SUTHERLAND: Object to the form.

14 THE WITNESS: Again, I did not prepare
15 the PowerPoint. I believe that -- that that was
16 included because it was part of the search for
17 Pentobarbitol.

18 BY MS. LEONARD:

19 Q. Sorry. To clarify, "It was part of search",
20 meaning the DEA meeting was part of the search?

21 A. Yes.

22 Q. Do you believe that this statement is
23 accurate?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: Which statement?

1 BY MS. LEONARD:

2 Q. Well, we'll take them one by one. Do you
3 believe that at the meeting the agents informed the
4 former pharmacy owner that blank, blank, blank
5 because according to them there's a supply of
6 Pentobarbital available in the United States? Do
7 you believe that's really what happened at that
8 meeting?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: I have no reason to
11 disbelieve it.

12 BY MS. LEONARD:

13 Q. And do you believe that when told that the
14 companies who do have a supply would not sell their
15 supply for using lethal injection, the blank -- we
16 could fairly assume the DEA agents explained that it
17 didn't matter, and that it was an issue to take up
18 with the companies themselves. Do you believe
19 that's accurate?

20 MR. SUTHERLAND: Object to the form.

21 THE WITNESS: Again, I have no reason to
22 disbelieve it.

23 BY MS. LEONARD:

24 Q. What did you do --

25 A. I don't have personal knowledge though.

1 Q. What did you do to ensure that these were
2 accurate statements?

3 A. I -- I did not do anything to ensure they
4 were accurate. I assumed that the drug procurer was
5 being accurate.

6 Q. You assumed the drug procurer was being
7 accurate, but you didn't talk to him any further
8 about that?

9 A. I don't know about any further. We had a
10 discussion about it, and I had no reason to doubt
11 the credibility of the drug procurer.

12 Q. Was the drug procurer part of the DEA
13 meeting?

14 A. No.

15 MR. SUTHERLAND: Object to the form.

16 THE WITNESS: Not to my knowledge.

17 BY MS. LEONARD:

18 Q. So you were relying on the drug procurer's
19 secondhand relay of the information he got from the
20 former pharmacy owner?

21 A. Well, I wasn't relying on anything. But,
22 yes, I think that information confirmed what we
23 understood to be the case.

24 Q. Did you want the Commissioner and the other
25 decision-makers to have the most accurate

1 information?

2 A. Sure.

3 Q. And yet you didn't take any steps to ensure
4 that this was what actually happened at that
5 meeting?

6 A. No. That was not --

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: -- my role. I'm sorry.
9 That was not my role.

10 BY MS. LEONARD:

11 Q. The next page says: Redacted is now
12 researching FDA regulations as a result of this case
13 to determine what, if any, process can be undertaken
14 to obtain FDA approval for the importation of
15 Pentobarbital. Is "redacted" in this sentence you?

16 A. No.

17 Q. Is "redacted" the drug procurer?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: I don't know.

20 BY MS. LEONARD:

21 Q. You don't know who was researching the FDA
22 regulations?

23 A. I don't personally.

24 Q. Do you know the results of that researcher?

25 A. All I know is that, I believe, the Texas case

1 has not resulted in Texas being able to have their
2 sodium thiopental released to them.

3 Q. How do you know that?

4 A. I followed the case, and I haven't heard
5 anything in years that indicated that they had won
6 that case.

7 Q. Okay. But you're not the individual that was
8 researching the FDA regulations as a result of that
9 case?

10 A. I was not.

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: Oh, sorry.

13 BY MS. LEONARD:

14 Q. And you don't know -- and you don't know who
15 was?

16 MR. SUTHERLAND: The same objection.

17 THE WITNESS: No.

18 BY MS. LEONARD:

19 Q. And you're the General Counsel at TDOC?

20 A. That's right.

21 Q. And you testified earlier that all of the
22 lawyers except for those that are not working in a
23 legal capacity for TDOC report to you?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: They do.

1 BY MS. LEONARD:

2 Q. And you don't know who was conducting this
3 legal research?

4 MR. SUTHERLAND: Object to the form.

5 THE WITNESS: Well, first of all, I
6 don't know that it was legal research but that's
7 correct. I did not prepare this PowerPoint.

8 BY MS. LEONARD:

9 Q. But you saw the PowerPoint, right?

10 A. I did.

11 Q. And you saw it before it was presented?

12 A. I'm sure I did.

13 Q. And you weren't curious about who was doing
14 this research into legal topics?

15 MR. SUTHERLAND: Object to the form.

16 THE WITNESS: I might have known looking
17 at an un-redacted PowerPoint, but I don't know today
18 looking at the redacted PowerPoint.

19 BY MS. LEONARD:

20 Q. The last sentence on this page says: Thus
21 far the approval process appears to be very
22 cumbersome unless an exception can be claimed to
23 lessen the burden. What was cumbersome about the
24 approval process?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: Okay. I don't -- I don't
2 know specifically, but we did know that Texas had
3 been unsuccessful in being able to import sodium
4 thiopental.

5 BY MS. LEONARD:

6 Q. What kind of exceptions could be claimed?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Again, I don't know. I
9 was not looking into that particular aspect. The
10 drug procurer was and prepared this PowerPoint.

11 BY MS. LEONARD:

12 Q. Did you seek an exception to be allowed to
13 import pentobarbital?

14 A. I didn't.

15 Q. Did the drug procurer seek one?

16 MR. SUTHERLAND: Objection to the form.

17 THE WITNESS: I believe the drug
18 procurer requested that the former pharmacy owner
19 attempt to obtain a license or a certificate to
20 import, and that was unsuccessful.

21 BY MS. LEONARD:

22 Q. And do you know whether the drug procurer
23 also looked into an exception to import
24 pentobarbital from overseas?

25 A. I expect that the drug procurer did.

1 Q. But you don't know?

2 A. No.

3 Q. You never asked him?

4 A. No.

5 Q. Is that something you would expect that he
6 would tell you?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: I -- I did not ask the
9 drug procurer, and I don't recall any update about
10 that.

11 BY MS. LEONARD:

12 Q. Are you aware of the approval process to
13 import pentobarbital today?

14 A. No. I'm really not an expert on that.

15 Q. When did you most recently research this
16 approval process?

17 A. Not recently. Again, that was the role of
18 the drug procurer.

19 Q. And when's the last time that the drug
20 procurer researched this issue?

21 A. I don't know.

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: I'm sorry. I don't know.

24 BY MS. LEONARD:

25 Q. You haven't asked the drug procurer about

1 this?

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: No, not recently.

4 BY MS. LEONARD:

5 Q. Is this something that you would assume if he
6 had an update, he would tell you?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Yes.

9 BY MS. LEONARD:

10 Q. Has anyone at TDOC attempted to obtain
11 pentobarbital from overseas since this PowerPoint
12 was presented in August of 2017?

13 MR. SUTHERLAND: Object to the form.

14 THE WITNESS: I don't know for sure
15 based on the date of the PowerPoint. But, again, I
16 think I mentioned the attempt to have the former
17 pharmacy owner look into that and get licensed to do
18 that, and that again was unsuccessful.

19 BY MS. LEONARD:

20 Q. Have you attempted to obtain pentobarbital
21 from overseas since this PowerPoint was presented?

22 A. I haven't, no.

23 Q. Why not?

24 A. That's not my role.

25 Q. And is that because the drug procurer is the

1 sole individual responsible for this?

2 A. Yes. He's been -- the drug procurer has been
3 given that responsibility.

4 Q. When you refer to the former pharmacy owner
5 that way, did the former pharmacy owner subsequently
6 leave the pharmacy?

7 A. Yes. That's my understanding.

8 Q. When approximately did that individual leave
9 the pharmacy?

10 A. Gosh, I don't -- I don't know. I think he
11 sold his interest. I don't know when that was. Let
12 me think. I know that it was sort of the beginning
13 of a new year. I don't know if that's 2019, 2020.
14 I just don't know.

15 Q. So other than what you heard about the former
16 pharmacy owner trying to obtain a license, you're
17 not aware of any other attempts to obtain
18 pentobarbital from overseas since this PowerPoint
19 was presented?

20 MR. SUTHERLAND: Object to the form.

21 THE WITNESS: I can't say for certain
22 that there have been no efforts. I believe the drug
23 procurer probably has been, you know, sort of
24 keeping tabs on that situation. Again, I don't have
25 personal knowledge.

1 BY MS. LEONARD:

2 Q. And the drug procurer just can keep this
3 information to himself?

4 MR. SUTHERLAND: Object to the form.

5 THE WITNESS: I don't know what you're
6 asking. The drug procurer probably would not. If
7 there was any success, certainly the drug procurer
8 would let the Commissioner know about that
9 certainly.

10 BY MS. LEONARD:

11 Q. Is the drug procurer required to keep you
12 updated on his or her efforts to obtain
13 pentobarbital?

14 A. There's no specific requirement. But, again,
15 you know, as I mentioned, we have sort of constant
16 contact.

17 Q. So other than the drug procurer volunteering
18 information to you, you have no way of knowing what
19 his efforts might or might not be to obtain
20 pentobarbital?

21 A. No. The drug procurer would be the one to
22 testify about that.

23 Q. Right. But there's -- but you would not know
24 other than that individual just simply volunteering
25 information?

1 A. Yeah. I --

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: Sorry, other than what
4 I've said.

5 BY MS. LEONARD:

6 Q. Two more quick questions about this
7 PowerPoint. On Page 16 it says: A few years ago
8 approximately 13 states reached out to the
9 Department of Justice seeking aide in locating a
10 source for LIC chemicals or/and gaining access to
11 any supply that the Federal government currently
12 had. This did not result in any action by DOJ. Did
13 TDOC ever reach out to DOJ?

14 A. Yes.

15 Q. When?

16 A. I don't have a date.

17 Q. And what did TDOC ask DOJ for?

18 MR. SUTHERLAND: Object to the form.

19 THE WITNESS: I believe we were one of
20 the states that did exactly what this PowerPoint
21 says. Subsequently I've reached out to the Bureau
22 of Prisons.

23 BY MS. LEONARD:

24 Q. Subsequently you have?

25 A. Yes.

1 Q. How recently?

2 A. I'm guessing maybe a year ago when they
3 announced that they were adopting a pentobarbital
4 protocol.

5 Q. Okay. And did you only have one contact at
6 that time?

7 A. Yeah. I think I only had one contact, and it
8 was -- they completely shut me down.

9 Q. Did they tell you that they couldn't give you
10 any?

11 A. Oh, I wasn't asking to -- for them to provide
12 me with pentobarbital. I was asking about their
13 source.

14 Q. Okay. So they shut down your questions about
15 the source?

16 A. Absolutely.

17 Q. I see. Was the drug procurer involved in
18 that contact at all?

19 A. No.

20 Q. So you did that on your own?

21 A. Yes.

22 Q. And is that the only time that you've looked
23 for pentobarbital since this PowerPoint?

24 A. Probably since this PowerPoint I haven't had
25 any other contacts. Again, the drug procurer has

1 sort of taken on that role.

2 Q. I'll just give you a few seconds here to
3 review the second paragraph on this page.

4 A. (Reviewing document.) Okay.

5 Q. What does that paragraph mean?

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: Again, I didn't draft
8 this, but it's my understanding that there is a
9 provision in Federal law for the Federal government
10 to be able to step in and obtain some, you know,
11 assistance to states and -- when supplies are low.
12 And, again, based on the first paragraph, there was
13 no willingness to do that.

14 BY MS. LEONARD:

15 Q. Okay. The last page has a little man with a
16 big question mark, which appears to invite
17 questions. Did anyone ask questions?

18 A. I'm sure there were questions throughout the
19 presentation, but I don't recall what they were.

20 Q. Did anyone make statements at the end of the
21 presentation?

22 A. That's possible, but again I don't recall --

23 Q. Okay.

24 A. -- what they were.

25 Q. And what happened after this presentation?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: Can you be more specific?

3 BY MS. LEONARD:

4 Q. Sure. You had indicated earlier that the
5 purpose was -- I don't want to put words in your
6 mouth -- but the purpose was to update the
7 Governor's office and other entities about the
8 search for pentobarbital, and that this clearly --
9 this indicated clearly that pentobarbital's no
10 longer available to TDOC; is that right?

11 A. Correct.

12 Q. So once that information was made clear on
13 this PowerPoint, what happened?

14 MR. SUTHERLAND: The same objection.

15 THE WITNESS: Okay. We eventually
16 adopted the three-drug protocol using midazolam.

17 MS. LEONARD: Okay. Let's take a short
18 break here. What time is it? I mean, I guess we
19 could do -- it's maybe early for lunch, but do you
20 want to do a lunch break now or do you want to do a
21 shorter break --

22 MR. SUTHERLAND: That's fine.

23 MS. LEONARD: -- and go for another hour
24 or so?

25 MR. SUTHERLAND: It's up to you. It

1 doesn't matter to me.

2 MS. LEONARD: Are you ready for a lunch
3 break now?

4 THE WITNESS: I'm good. I'm fine either
5 way.

6 MS. LEONARD: Okay. We can do lunch now
7 then and maybe for -- come back around say 12:30.

8 MR. SUTHERLAND: Sure.

9 MS. LEONARD: Is that enough time?

10 MR. SUTHERLAND: Yeah.

11 MS. LEONARD: All right.

12 THE VIDEOGRAPHER: We are going off the
13 record. The time is 11:43 a.m.

14 (A lunch break was taken.)

15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 12:34 p.m.

17 BY MS. LEONARD:

18 Q. All right. Let's turn to Exhibit 6. Do you
19 see this is an e-mail that was sent on
20 September 7th, 2017?

21 A. Yes.

22 Q. And it says: So the word from the powers
23 that be is that they first want to try to find
24 midazolam and then go from there, if there are none
25 out there to get. Who are the "powers that be"?

1 MR. SUTHERLAND: Object to the form.

2 You can answer.

3 THE WITNESS: I didn't write this so I
4 can't say for sure. Probably the Commissioner.

5 BY MS. LEONARD:

6 Q. Would the powers that be include you?

7 A. No.

8 Q. Was it the Commissioner who decided to look
9 for midazolam?

10 A. Yeah, I believe so.

11 Q. And did the Commissioner also decide to look
12 for the other two drugs in the protocol at this
13 point?

14 A. I don't recall at that -- at that point that
15 we had a problem getting the other two, so I might
16 be wrong but, you know, our primary concern at this
17 point was the midazolam.

18 Q. Who decided that the vecuronium bromide and
19 the potassium chloride should be the second two
20 drugs in the protocol?

21 A. I don't recall. I think they have been part
22 of the protocol since I got to the Department except
23 for the period where there was pentobarbital. So I
24 can't really say where that originally came from.
25 It's what has been used by many, many other states.

1 Q. Right. Was this the first time that anyone
2 at TDOC looked for midazolam?

3 A. I don't know for sure. This was around the
4 time that we knew we had to search for something
5 else. So it might have been the first time, but
6 before the PowerPoint I suspect there was some
7 effort to see that it was available. But I -- I
8 don't have any specifics on that.

9 Q. So the PowerPoint we saw before the break was
10 dated August 31st, 2017, right?

11 A. Right.

12 Q. So we know that was either the date it was
13 created or the date it was presented at latest?

14 A. Right.

15 Q. And this September 7th, 2017, is about a week
16 later; is that right?

17 A. Yes.

18 Q. So was the decision made to look for
19 Midazolam on the day of the PowerPoint presentation?

20 MR. SUTHERLAND: Object to the form.
21 You can answer.

22 THE WITNESS: Okay. I mean, there's the
23 discussion when the PowerPoint was presented. At
24 that point we did, I think, have a decision that we
25 were going to try to get the midazolam and go with

1 that protocol.

2 BY MS. LEONARD:

3 Q. So sometime in between the presentation and
4 the date of this e-mail is when that decision was
5 made?

6 A. Yes, because that decision the Commissioner
7 would have wanted to present that to the Governor's
8 office.

9 Q. When was the drug procurer instructed to look
10 for midazolam?

11 A. I don't have a date on that.

12 Q. Would that also have been sometime between
13 August 31st and September 7th?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: Again, it would be
16 speculation. I think at that point we probably knew
17 that some other states were using midazolam. And
18 the drug procurer might have done, you know, some
19 work to see if midazolam was readily available. But
20 I don't have any specifics on that. It could have
21 been after. I just don't know.

22 BY MS. LEONARD:

23 Q. If the drug procurer looked for Midazolam
24 prior to August 31st, 2017, why was that information
25 not included in the PowerPoint?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: I don't know whether it
3 was included in the PowerPoint.

4 BY MS. LEONARD:

5 Q. Well, we just went through the PowerPoint
6 before the break and --

7 A. Not as to that specific question though. I
8 mean, I can look back at it.

9 Q. Sure. We can do that. It's Exhibit 16, the
10 PowerPoint. If you want to take a minute to flip
11 through.

12 A. On Page 14 it does mention that Arkansas had
13 subsequently obtained a supply of midazolam. On
14 Page 15 it mentions Alabama's use of midazolam. So,
15 again, that's the only mention in the PowerPoint.
16 That -- that still doesn't help me know for sure
17 when the search began.

18 Q. So is there a reason that the search would
19 have been underway at that point that it would not
20 have been included in the PowerPoint?

21 A. I don't know.

22 MR. SUTHERLAND: Object to the form.

23 THE WITNESS: I'm sorry. I don't know.

24 BY MS. LEONARD:

25 Q. Let's look at Exhibit 7.

1 A. (Complies.)

2 Q. Is this a response to the e-mail that we just
3 discussed?

4 MR. SUTHERLAND: Object to the form.

5 THE WITNESS: The timing seems right,
6 but I don't know.

7 BY MS. LEONARD:

8 Q. Sure. It says on -- let's go to the next
9 page of this exhibit. So it's Page 1974 at the
10 bottom?

11 A. Uh-huh.

12 Q. The first sentence in the e-mail sent at
13 12:58 p.m. says: That stuff is readily available
14 along with potassium chloride. Is that stuff
15 midazolam?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: I don't know.

18 BY MS. LEONARD:

19 Q. And then the second sentence says: I
20 reviewed several protocols from states that
21 currently use that method. What states' protocols
22 were reviewed?

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: I don't know.

25 / /

1 BY MS. LEONARD:

2 Q. Do you know who wrote this e-mail?

3 A. It looks to be the former pharmacy owner.

4 Q. Did you ever talk with the pharmacy -- former
5 pharmacy owner -- excuse me -- about this e-mail?

6 A. No, I did not.

7 Q. Did you ever talk with the former pharmacy
8 owner about what states' protocols he reviewed?

9 A. No.

10 Q. And then if you keep reading, it says: Here
11 is my concern with midazolam. Being a
12 benzodiazepine it does not elicit strong analgesic
13 effects. Subjects may be able to feel pain from the
14 administration of the second and third drugs,
15 potassium chloride especially. What did TDOC do
16 with this e-mail?

17 MR. SUTHERLAND: Object to the form.

18 THE WITNESS: I don't -- I don't want to
19 speculate. I'm sure -- well, I expect that the
20 Commissioner was aware of it, and we had other
21 sources of information, particularly states that had
22 conducted executions using midazolam. And this
23 appears to be --- the former pharmacy owner reviewed
24 protocols from other states, and that might be what
25 he's referring to here is information based on

1 litigation surrounding the use of midazolam. But,
2 again, I -- I don't know any more than that.

3 BY MS. LEONARD:

4 Q. What did you do with this e-mail?

5 A. I personally didn't do anything with it.

6 Q. What did you think when you saw this e-mail?

7 A. I don't recall when I first saw it. But,
8 again, we knew that it's been used and successfully
9 in a number of other states. So it didn't cause
10 much concern.

11 Q. Did you discuss this e-mail with anybody else
12 at TDOC?

13 A. I don't recall.

14 Q. And you didn't have any concerns after
15 reading this e-mail?

16 A. No, not based on other information that we
17 had.

18 Q. And what was that other --

19 A. Other states' successful use of the protocol.

20 Q. Did you consult with a doctor after you
21 received this e-mail?

22 A. I don't recall consulting with a doctor.

23 Q. Did you consult with a pharmacologist?

24 A. No, I don't think so.

25 Q. Did you consult with an anesthesiologist?

1 A. No. At that point anesthesiologists were
2 really not willing to advise us.

3 Q. Does that include the two anesthesiologists
4 that you spoke with years prior when --

5 A. Years prior, yes.

6 Q. Okay. So those two were no longer willing to
7 provide you with any information?

8 A. I know one definitely was not, and I couldn't
9 locate the other one.

10 Q. Did you conduct any independent research
11 after you read this e-mail?

12 A. No.

13 Q. Was there any discussion about searching for
14 drugs other than midazolam that might elicit
15 analgesic effects?

16 A. I think some other chemicals were mentioned.
17 I wasn't personally involved in that search though.

18 Q. Did anyone discuss continuing the search for
19 pentobarbital?

20 A. Yes. It was my understanding that we had
21 requested that the former pharmacy owner continue
22 that search of pentobarbital.

23 Q. Had requested it when exactly?

24 A. Well --

25 MR. SUTHERLAND: I'm sorry. What's your

1 question again? Would you repeat that? I'm sorry.

2 BY MS. LEONARD:

3 Q. Sure. You indicated that you continued to --
4 that you requested that the former pharmacy owner
5 continue the search for pentobarbital. When did you
6 make that request?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Okay. That would have
9 been the drug procurer. I think -- I'm not going to
10 know a specific date, but it would have been at the
11 point where the pentobarbital that we had had
12 expired; and we were looking to replenish that
13 supply.

14 BY MS. LEONARD:

15 Q. When did that last batch of pentobarbital
16 expire?

17 A. I don't have the date on that. It was while
18 the litigation was pending challenging the
19 pentobarbital protocol.

20 Q. The e-mail then advises that you consider the
21 use of an alternative like ketamine or use in
22 conjunction with an opioid. Did you consider that
23 at all?

24 A. I didn't. I can't say whether the
25 Commissioner did. Again, I know that the

1 Commissioner was not anxious to use a protocol that
2 had not been tested and used successfully in other
3 states.

4 Q. Did you attempt to obtain ketamine?

5 A. I didn't. I don't know if the drug procurer
6 did or not.

7 Q. Why did you not attempt to obtain ketamine?

8 A. That wasn't my role at the time.

9 Q. Did you instruct the drug procurer to obtain
10 ketamine?

11 A. I did not.

12 Q. Did you instruct him to search for any other
13 drugs?

14 A. I did not.

15 Q. Why does TDOC not use an opioid?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: I don't know. Again, as
18 I've indicated we want to use something that's been
19 tested and successfully implemented in another
20 jurisdiction.

21 BY MS. LEONARD:

22 Q. It says here availability of the paralytic
23 agent is spotty. Have you ever had any trouble
24 obtaining the paralytic agent?

25 A. I think, yes, there was a time when it was

1 scarce.

2 Q. And did you consider going forward with the
3 execution with only two drugs?

4 A. No.

5 Q. Why not?

6 A. That wasn't our protocol --

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Oh, sorry. Yeah. That
9 wasn't our protocol, and that had not been used in
10 any other jurisdiction.

11 BY MS. LEONARD:

12 Q. Let's go to Exhibit 8. This is another
13 September 7th, 2017, e-mail. It says here at the
14 top of the page: Etomidate, limited supply of
15 ketamine. Ample supply of sodium thiopental no
16 longer available. Is this e-mail from the former
17 pharmacy owner?

18 MR. SUTHERLAND: Object to the form.

19 THE WITNESS: I mean, it appears to be.
20 Again, I wasn't the recipient of this e-mail, but
21 that would be my best guess.

22 BY MS. LEONARD:

23 Q. What is etomidate?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: I'm really not familiar

1 with it.

2 BY MS. LEONARD:

3 Q. Have you ever heard of etomidate?

4 A. I've heard the name, yes.

5 Q. What is ketamine?

6 MR. SUTHERLAND: The same objection.

7 THE WITNESS: I believe that's maybe a
8 horse tranquilizer.

9 BY MS. LEONARD:

10 Q. And why did you not instruct the pharmacy to
11 obtain that?

12 A. I think at that time that wasn't being used
13 by anyone.

14 Q. And was anyone using etomidate at the time?

15 A. Not to my knowledge?

16 Q. Okay. Let's go to Exhibit 9. Actually,
17 let's go back to Exhibit 16 for a second, which is
18 the PowerPoint. On Page 15, the bottom bullet point
19 says: Florida is using a drug, etomidate, that has
20 never been used in the United States for execution.
21 Do you see that?

22 A. I do.

23 Q. Is that an accurate statement? Was that an
24 accurate statement at the time of this PowerPoint, I
25 should say?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: I don't know if they had
3 adopted the protocol or actually used the protocol.
4 I didn't -- again, I didn't draft this.

5 BY MS. LEONARD:

6 Q. But sitting here --

7 A. I don't -- I don't know that they -- at that
8 point they had actually used it.

9 Q. Okay. But sitting here today you can't tell
10 me what etomidate is?

11 A. No.

12 Q. Did you ask anyone at the conclusion of this
13 PowerPoint what etomidate was?

14 A. No.

15 Q. Did everyone else that attended the
16 presentation know what it was?

17 MR. SUTHERLAND: Object to the form.

18 THE WITNESS: I don't know.

19 BY MS. LEONARD:

20 Q. Did anyone else know what it was?

21 MR. SUTHERLAND: The same objection.

22 THE WITNESS: I think the drug procurer
23 did, but I don't know what other people knew.

24 BY MS. LEONARD:

25 Q. Okay. We'll go back to Exhibit 9.

1 A. (Complies.)

2 Q. This is the second page on the exhibit, so it
3 says 000144 at the bottom. And it says here at top:
4 So the word from the powers that be is that we want
5 to move forward with ordering the items for a
6 three-drug protocol including midazolam, vecuronium,
7 and potassium chloride. Did TDOC stop its search
8 for pentobarbital at this time?

9 A. I don't --

10 MR. SUTHERLAND: Objection to form.

11 THE WITNESS: I'm sorry. No, I don't
12 think so.

13 BY MS. LEONARD:

14 Q. How do you know?

15 A. I mean, it's my understanding from the drug
16 procurer that we would continue to do that. And we
17 even kept that in the protocol when we provided the
18 alternative of midazolam, three-drug protocol. So
19 we were keeping that in the event that it became
20 available.

21 Q. And are the powers that be in this e-mail the
22 same powers that be that we saw in the previous
23 exhibit?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: Yeah. I think I've

1 already testified that I don't -- you know, I can't
2 say who all the powers that be are, but I would
3 assume it includes the Commissioner.

4 BY MS. LEONARD:

5 Q. And you were not included in any of those
6 discussions?

7 A. Not in this e-mail.

8 Q. Were you included in any of the discussions
9 that gave rise to this e-mail, which says: The
10 powers that be want to move forward with ordering
11 the items for the three-drug protocol?

12 A. Well, I was at the meeting when the
13 PowerPoint was presented.

14 Q. Was that the only meeting that gave rise to
15 this decision?

16 A. There was probably some subsequent discussion
17 direction from the Commissioner to go forward with
18 midazolam.

19 Q. And were you part of those discussions?

20 A. I don't recall specific discussions, but I
21 expect that I was.

22 Q. You testified that you did not create the
23 PowerPoint; is that right?

24 A. Right.

25 Q. And you were not the individual who made the

1 decision to adopt the three-drug protocol?

2 A. No. That would have been the Commissioner.

3 Q. And you were not part of that decision at
4 all?

5 A. No, it --

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: I'm sorry. No. That's --
8 that's a Commissioner decision.

9 BY MS. LEONARD:

10 Q. That he makes alone?

11 A. Yes.

12 Q. Okay. So why were you at that PowerPoint
13 presentation?

14 A. For -- I mean, just so that I would have
15 information and in case, you know, I had historical
16 knowledge in case questions came up that I needed to
17 respond to.

18 Q. And so did you use the information that you
19 gleaned at that PowerPoint in those subsequent
20 discussions that you just mentioned?

21 MR. SUTHERLAND: Objection to the form.

22 THE WITNESS: Really, what was in the
23 PowerPoint was stuff that I already knew. The
24 purpose of the PowerPoint was to present the current
25 state that we were in in terms of being able to

1 carry out on an execution, and I was already
2 familiar with that.

3 BY MS. LEONARD:

4 Q. So what was in the PowerPoint was stuff you
5 already knew, but you didn't know everything that
6 was in the PowerPoint; right?

7 A. No.

8 Q. And you didn't ask questions about the things
9 that you didn't understand?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: I don't recall any
12 specific question that I asked.

13 BY MS. LEONARD:

14 Q. And why didn't you ask any questions if you
15 didn't understand everything that was in the
16 PowerPoint?

17 MR. SUTHERLAND: The same objection.

18 THE WITNESS: Okay. I relied on the
19 drug procurer, who prepared the PowerPoint, and had
20 been the one that had actually been involved in
21 conversations and in the search for drugs.

22 BY MS. LEONARD:

23 Q. Is the drug procurer a pharmacist?

24 A. No.

25 Q. Was the drug procurer a medical doctor?

1 A. No.

2 Q. Why did you feel it was appropriate to rely
3 on the drug procurer's advice in this PowerPoint
4 given that he's neither a medical doctor nor a
5 pharmacist?

6 A. The drug procurer had been the one doing the
7 search and talking to other people, including the
8 former pharmacy owner, who employed pharmacists,
9 and, you know, I'm not sure. The drug procurer
10 probably could answer better as to what in
11 particular he relied on. But I wasn't relying on
12 his medical knowledge, but I was relying on the drug
13 procurer's search efforts in researching this.

14 Q. Is the drug procurer a lawyer?

15 MR. SUTHERLAND: I'm going to object and
16 instruct the witness not to answer the question
17 based on the Court's protective order.

18 BY MS. LEONARD:

19 Q. Given that you're TDOC's General Counsel, did
20 you feel that you had a role in helping TDOC
21 determine whether this was a constitutionally
22 acceptable protocol?

23 A. Yes.

24 Q. Okay. And you -- well, let me scratch that.
25 So why is it that the powers that be decided to move

1 forward with the three-drug protocol?

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: I can't answer that.

4 BY MS. LEONARD:

5 Q. Is that because you don't know?

6 A. It's because you're asking me for information
7 about the thought process of someone else. I can't
8 speak from personal knowledge about that.

9 Q. So you were involved in these discussions,
10 but you don't have any idea why this decision was
11 made?

12 MR. SUTHERLAND: The same objection.

13 THE WITNESS: Okay. It's my
14 understanding that this has been a protocol that has
15 been used in several other states successfully. The
16 Commissioner had discussions with correctional
17 experts who had been involved in those types of
18 executions and for that reason felt comfortable with
19 adopting this protocol.

20 BY MS. LEONARD:

21 Q. Do you believe that this is a
22 constitutionally acceptable protocol?

23 A. Yes.

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: Sorry. I do.

1 BY MS. LEONARD:

2 Q. Did anyone at TDOC ask you your opinion on
3 that while they were making this decision?

4 A. I don't believe anyone asked me point-blank
5 about that. But if I had thought it was not
6 constitutional, I would have spoken up.

7 Q. Okay. Let's go to Exhibit 12. In the e-mail
8 on the bottom half of this page at 9:35 a.m., the
9 second sentence says: We would need at least
10 100 grams to start with. Why did you ask for at
11 least 100 grams to start with?

12 MR. SUTHERLAND: Objection to the form.

13 THE WITNESS: Okay. I didn't ask that
14 question, so I really can't respond.

15 BY MS. LEONARD:

16 Q. Were you aware that TDOC was looking for at
17 least 100 grams to start with?

18 A. You know, ideally we wanted enough of a
19 supply to support us changing the protocol. Again,
20 I think we -- we would, you know, want at least
21 enough to do at least one or two executions,
22 certainly one, and that would include, you know, two
23 sets of the 500 milligrams. But, again, we were,
24 you know, looking for whatever we could get, and
25 things went farther than just that discussion.

1 Q. Okay. To be clear this is -- I shouldn't
2 have skipped over the first sentence, which is, I'm
3 looking to purchase pentobarbital. So this is in
4 the search for pentobarbital?

5 A. Uh-huh.

6 Q. How many grams of pentobarbital are needed
7 for a single execution?

8 MR. SUTHERLAND: Object to the form.

9 THE WITNESS: I don't recall.

10 BY MS. LEONARD:

11 Q. So do you know how many executions could be
12 carried out with 100 grams of pentobarbital?

13 MR. SUTHERLAND: The same objection.

14 THE WITNESS: Yeah. And because I don't
15 recall exactly how much was used, it would be double
16 whatever that protocol called for for each
17 execution.

18 BY MS. LEONARD:

19 Q. Okay. So you don't know why TDOC would have
20 asked for at least 100 grams to start with?

21 A. No. Other than, you know, we wanted to have
22 enough. We wanted to have a supply. I mean, this
23 was going to be -- this is the protocol that we were
24 going to use going forward. So, you know, I
25 think there was an effort to determine just how

1 available it was.

2 Q. Does pentobarbital have a beyond use date?

3 A. I'm sure it does.

4 Q. Do you know roughly how long that is?

5 A. No.

6 Q. At this time would TDOC have been willing to
7 engage in further conversations with a source that
8 could have provided only fewer than a hundred grams
9 to start with?

10 A. Yes.

11 Q. How do you know that?

12 A. I just know that we were looking for it and
13 that at that time was our preferred method.

14 Q. But you don't know how many a hundred -- how
15 many executions a hundred grams would achieve?

16 A. Not this morning.

17 Q. But you know it's at least one or two?

18 A. It should be --

19 MR. SUTHERLAND: Objection to form.

20 BY MS. LEONARD:

21 Q. Okay. Exhibit 13 is another e-mail. This
22 one's dated July 20th, 2017. It says in part: I
23 have some news on the pento. It's not good. I had
24 the DEA invite me over to discuss it. I can call
25 you tomorrow to fill you in on the details. Are you

1 available? Did anyone from TDOC discuss this DEA
2 meeting?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: I was aware that it
5 happened. I don't know what all discussions were
6 involved. The drug procurer first received this
7 information.

8 BY MS. LEONARD:

9 Q. How are you aware of the DEA meeting?

10 A. The drug procurer, I'm sure, mentioned it to
11 me.

12 Q. Was the drug procurer present at the DEA
13 meeting?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: Not to my knowledge.

16 BY MS. LEONARD:

17 Q. Who was present at the DEA meeting?

18 MR. SUTHERLAND: The same objection.

19 THE WITNESS: The former pharmacy owner
20 and I -- I have no idea who else might have been in
21 the meeting. It sounds like DEA agents were there.

22 BY MS. LEONARD:

23 Q. Presumably. Was anyone from TDOC there?

24 A. No, not that I know of.

25

1 Q. Would you have been aware if somebody from
2 TDOC attended a meeting with the DEA?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: I expect I would. But,
5 again, this e-mail, I think, is the first
6 notification we had; and it had already happened.

7 BY MS. LEONARD:

8 Q. Do you know what the DEA said about whether
9 they could provide pentobarbital during this
10 meeting?

11 MR. SUTHERLAND: Object to the form.

12 THE WITNESS: It's my understanding the
13 discussion was whether the Department could obtain
14 it through importation, and the gist of the meeting
15 was we could not.

16 BY MS. LEONARD:

17 Q. Why not?

18 MR. SUTHERLAND: The same objection.

19 THE WITNESS: The DEA indicated that
20 they would not grant a license to import it, but I
21 don't have the details. I don't want to talk about
22 specifics about a meeting that I wasn't present on.
23 This is kind of the extent of my knowledge.

24 BY MS. LEONARD:

25 Q. Did the former pharmacy owner discuss

1 executions with the DEA during that meeting?

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: I don't know.

4 BY MS. LEONARD:

5 Q. Did the drug -- did you ask the drug procurer
6 if the drug procurer knows that?

7 MR. SUTHERLAND: The same objection.

8 THE WITNESS: No.

9 BY MS. LEONARD:

10 Q. So you don't even know whether the topic of
11 executions came up at this meeting?

12 A. Well, it's my understanding that was the
13 whole point of it -- of the meeting, and they -- the
14 DEA would not allow importation for use in
15 executions.

16 Q. Okay. And you relied on the drug procurer's
17 representations to you about that meeting?

18 A. Sure.

19 Q. Let's look at Exhibit 18. This says,
20 starting on the second sentence: We are still
21 searching for a USP grade Pentobarbital. The e-mail
22 is dated June 20th, 2018. Why were you still
23 searching for pentobarbital at that time?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: Yeah. I believe at that

1 point we still had pentobarbital as an option in our
2 protocol.

3 BY MS. LEONARD:

4 Q. Okay. And then a couple of sentences later
5 -- this is on the third line. It says: We would
6 need at least 10 grams. In the previous e-mails I
7 mentioned needing overall 100 grams, but I want to
8 see what, if any, amount might be available to
9 order. Why is it that TDOC now only is asking for
10 10 grams?

11 MR. SUTHERLAND: The same objection.

12 THE WITNESS: I think at this point it
13 sounds like we just wanted whatever we could get, if
14 it was sufficient for an execution or two. But,
15 again, I already mentioned I don't remember on the
16 pentobarbital protocol what that amount was, so I'm
17 not sure what the 10 grams represents.

18 BY MS. LEONARD:

19 Q. Let's go to Exhibit 17. This says: It's
20 possible we could order it but getting it imported
21 would be the issue. It's a Scheduled II drug, and
22 the DEA has already advised us that they do not
23 allow the importation of drugs that are considered,
24 quote, readily available in the US. Is it the API
25 for pentobarbital?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: I can't -- given the date
3 it probably was API, but I don't -- I don't know
4 whether it was commercially manufactured or API.

5 BY MS. LEONARD:

6 Q. Why were you still searching for
7 pentobarbital in October of 2019?

8 MR. SUTHERLAND: Object to the form.

9 THE WITNESS: We wanted to know whether
10 it was available currently at that time.

11 BY MS. LEONARD:

12 Q. And if it had been, would you have switched
13 to using a single-drug, pentobarbital, protocol?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: That would have been the
16 Commissioner's decision.

17 BY MS. LEONARD:

18 Q. Would you have recommended that to the
19 Commissioner?

20 A. I would have left that to him.

21 Q. Would he have sought a recommendation from
22 you?

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: It's hard -- probably but
25 it's hard for me to say.

1 BY MS. LEONARD:

2 Q. When did --

3 A. That was the protocol that we adopted when it
4 was available.

5 Q. The last sentence of this e-mail says: There
6 may be a loophole in there given that the product is
7 technically not readily available. What does it
8 mean that the product is "technically not readily
9 available"?

10 MR. SUTHERLAND: Object to the form.

11 THE WITNESS: It's not available to
12 Departments of Corrections for use in executions.

13 BY MS. LEONARD:

14 Q. And who told you that?

15 MR. SUTHERLAND: Don't identify anybody
16 by name.

17 THE WITNESS: Okay. Well, we discussed
18 the drug procurer's efforts to search for
19 pentobarbital and engage the assistance of the
20 former pharmacy owner. We all -- you know, we were
21 aware that other states were having trouble getting
22 it, and any state that had it was not willing to
23 talk to us about the source. So I think what that's
24 referring to is it's not readily available to
25 Departments of Correction for use in execution.

1 BY MS. LEONARD:

2 Q. Okay. And what would the loophole in there
3 be?

4 MR. SUTHERLAND: The same objection.

5 THE WITNESS: Okay. I did not draft
6 this. This may be a reference to is that an
7 argument that we can make to get around the readily
8 available issue. Could we argue that it's not
9 readily available to us?

10 BY MS. LEONARD:

11 Q. Did you try to do that?

12 A. I personally did not. I do believe that that
13 was -- I think one of the previous e-mails that we
14 looked at indicated that the DEA did not buy that
15 argument when they met with the former pharmacy
16 owner.

17 Q. And you were not present for that meeting,
18 you said?

19 A. No.

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: I'm sorry.

22 BY MS. LEONARD:

23 Q. Were you ever in direct communication with
24 the DEA about execution drugs?

25 A. Not about midazolam or anything current.

1 Q. Did you ever contact the DEA about
2 pentobarbital?

3 A. I did not.

4 Q. Did you ever contact the FDA about
5 pentobarbital?

6 A. No.

7 Q. Did the drug procurer ever contact the DEA
8 about pentobarbital?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: I don't know.

11 BY MS. LEONARD:

12 Q. Did the drug procurer ever talk to the FDA
13 about pentobarbital?

14 A. I don't know.

15 MR. SUTHERLAND: The same objection.

16 THE WITNESS: Sorry.

17 BY MS. LEONARD:

18 Q. So when -- so when we're talking about what
19 was shared with the DEA, we're talking about this
20 meeting between the former pharmacy owner and the
21 DEA; is that right?

22 A. Right. That's my understanding of the
23 meeting.

24 Q. And your understanding is that the former
25 pharmacy owner made that argument about technically

1 being not readily available to the DEA?

2 A. That's my understanding.

3 Q. And then in your words I think you said the
4 DEA didn't buy it?

5 A. Correct.

6 Q. When did TDOC most recently search for
7 pentobarbital?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: I think recently, but I
10 don't have any dates.

11 BY MS. LEONARD:

12 Q. Let's look at Exhibit 19.

13 A. (Complies.)

14 Q. Are you familiar with this memorandum?

15 A. I am.

16 Q. What is your understanding of this
17 memorandum?

18 A. Well, it's a memorandum from the Attorney
19 General's Office making the argument that the FDA
20 does not have jurisdiction to regulate articles
21 intended for use in -- by states in executions.

22 Q. And does that include lethal injection
23 chemicals?

24 A. Yes. I think that's the argument in this
25 opinion.

1 Q. Have you discussed this memorandum with
2 anyone at TDOC?

3 A. I'm sure I have. Probably with the drug
4 procurer, maybe with the Commissioner, but I don't
5 have a specific memory of an occasion where we
6 discussed this.

7 Q. What would you have told the drug procurer
8 about this?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: I don't know that I told
11 the drug procurer anything about this. I think we
12 probably discussed it together. The problem is
13 there was a court opinion looking at this issue in
14 terms of obtaining sodium thiopental through
15 importation, and the Court determined that the FDA
16 had to regulate it, and then as a result of that I
17 believe at that time we had some sodium thiopental
18 that was obtained by the DEA from us.

19 BY MS. LEONARD:

20 Q. Did you ever discuss this memorandum with the
21 former pharmacy owner, who had the visit from the
22 DEA?

23 A. I did not.

24 Q. Did the drug procurer discuss this memorandum
25 with the former pharmacy owner?

1 A. I don't know.

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: Okay. Sorry. I don't
4 know.

5 BY MS. LEONARD:

6 Q. Has TDOC attempted to obtain pentobarbital
7 overseas since the date this memorandum was issued?
8 The date was May 3rd, 2019.

9 A. I'll have to look back at some e-mails. No,
10 probably not since May of 2019.

11 Q. Why not?

12 A. Because we had already been told that we were
13 not going to be able to import.

14 Q. Are you aware that since this memorandum was
15 issued, other states have been successful in
16 obtaining pentobarbital overseas?

17 A. I don't know whether they imported it or not.
18 I just know we tried to get information about how
19 they've obtained it, and no information has been
20 shared with us.

21 Q. Are you aware that the DEA has not intervened
22 in any importation of execution drugs since this
23 memorandum was issued?

24 A. No.

25 Q. Did you contact the DEA about this

1 memorandum?

2 A. No, I didn't.

3 Q. Did you contact the FDA?

4 A. I did not.

5 Q. Did anyone else at TDOC make those contacts?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: Not to my knowledge.

8 BY MS. LEONARD:

9 Q. Why not?

10 MR. SUTHERLAND: The same objection.

11 THE WITNESS: Because we're -- you know,
12 we know the Court opinion is out there, and there's
13 been -- you know, there's an injunction in place.

14 BY MS. LEONARD:

15 Q. To this day?

16 A. Sorry. What?

17 Q. To this day?

18 A. To this day --

19 Q. There's an injunction in place to this day?

20 A. I -- I think so. I mean, I don't know that
21 there's been any other movement in the case.

22 Q. When's the last time that you researched that
23 case?

24 A. I -- I can't give you a date.

25 Q. And what's your understanding of the

1 injunction?

2 A. That the FDA has to regulate it and not
3 permit importation.

4 Q. And you believe that's still in place
5 presently?

6 A. I think so.

7 Q. Let's go to Exhibit 35, which I think is both
8 -- it might be the first one in the next set here,
9 Book 2. This is a June 26th, 2019, e-mail with a
10 subject line, Proposed alternative. And it just has
11 a list that says, midazolam -- and I can't say this
12 -- digoxin (phonetics), morphine sulfate, and
13 propranolol (phonetics). I can't say that one
14 either. Are these alternative drugs that can be
15 used in executions?

16 MR. SUTHERLAND: Objection to the form.

17 THE WITNESS: It appears that's probably
18 what that's referencing.

19 BY MS. LEONARD:

20 Q. Did anyone at TDOC look for any of these
21 drugs to use in executions?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: I don't know.

24 BY MS. LEONARD:

25 Q. Well, other than midazolam, I suppose, right?

1 A. Right.

2 Q. Do you have any reason to believe that TDOC
3 cannot obtain these drugs for use in executions?

4 A. I don't know whether we could or not.

5 Q. You've never looked into it?

6 A. I haven't, no.

7 Q. Has TDOC ever considered using an oral
8 administration of drugs for executions?

9 MR. SUTHERLAND: Objection to the form.

10 THE WITNESS: No.

11 BY MS. LEONARD:

12 Q. Why not?

13 MR. SUTHERLAND: The same objection.

14 THE WITNESS: Okay. I'm not aware that
15 any state has done that. We don't know what that
16 kind of a protocol would involve, and I don't know
17 how we would be able to force an inmate to drink the
18 oral chemicals.

19 BY MS. LEONARD:

20 Q. You said a couple times today that other
21 states have not used certain methods, and that seems
22 to be important to TDOC in considering its own
23 protocols. Is that a fair characterization?

24 A. Yes.

25 Q. Why is it important to TDOC that other states

1 have used a protocol before TDOC would adopt it?

2 A. Because we would -- we could rely on the
3 experience of other states in knowing that a
4 particular protocol has been successfully
5 implemented.

6 Q. What other states use the same three-drug
7 protocol that Tennessee currently uses?

8 A. Okay. That's -- I'm not going to be able to
9 name them all. I believe Virginia, maybe Georgia,
10 Alabama. Again, I don't know. There's several.

11 Q. Are you aware of past botched executions in
12 states that use this protocol?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Not -- I'm not aware of
15 botched executions using this protocol based on the
16 protocol itself --

17 BY MS. LEONARD:

18 Q. What do you mean --

19 A. -- not working.

20 Q. What do you mean "by based on the protocol
21 itself not working"?

22 A. I believe in Oklahoma there was an execution
23 that did not go well based on the fact that the
24 venous access was not good, but again it wasn't the
25 fact of the use of Midazolam. It was based on, you

1 know, the access to the vein.

2 Q. And was that an issue that had to do with the
3 training of the individuals that were carrying out
4 the execution?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: I don't know.

7 BY MS. LEONARD:

8 Q. You testified earlier that consistent with
9 the prior e-mail we saw sometimes, it's been
10 difficult to obtain a paralytic; is that right?

11 A. Yeah, on occasion that's true.

12 Q. At those times has TDOC considered removing
13 the paralytic?

14 A. No.

15 Q. And that's only because other states have not
16 done that?

17 A. Right, relying on experience of other
18 correctional professionals.

19 Q. And what -- do you know why it is that these
20 other states have not tried to remove the paralytic?

21 A. No, I wouldn't know that.

22 Q. You've never asked them?

23 A. No.

24 Q. And you've never asked any experts?

25 A. No.

1 Q. And you've never conducted your own
2 independent research?

3 A. No.

4 Q. Aside from the pharmacy that TDOC is
5 currently using, have you inquired with any other
6 companies to obtain midazolam?

7 A. I don't believe we have. I mean, obviously,
8 if --

9 MR. SUTHERLAND: Are you asking her if
10 she has or are you -- because she's saying "we", and
11 so I'm trying to figure out what you're -- are you
12 asking if she's done something or are you asking if
13 TDOC has done something?

14 BY MS. LEONARD:

15 Q. I'm asking -- well, let's -- yeah. Let's
16 clarify that. Other than the pharmacy that TDOC is
17 currently using, have you inquired with any other
18 companies to obtain midazolam?

19 MR. SUTHERLAND: Are you talking about
20 her?

21 BY MS. LEONARD:

22 Q. Yes. Have you personally?

23 A. I have not.

24 Q. Has the drug procurer?

25 A. I don't know.

1 MR. SUTHERLAND: Object to the form.

2 BY MS. LEONARD:

3 Q. Has anyone else at TDOC?

4 MR. SUTHERLAND: The same objection.

5 THE WITNESS: I can't answer that.

6 BY MS. LEONARD:

7 Q. How about vecuronium bromide?

8 MR. SUTHERLAND: The same objection.

9 THE WITNESS: The same answer.

10 BY MS. LEONARD:

11 Q. And the same thing for potassium chloride.

12 MR. SUTHERLAND: The same objection.

13 THE WITNESS: Yes.

14 BY MS. LEONARD:

15 Q. So as General Counsel and Deputy
16 Commissioner, you don't know whether anyone at TDOC
17 has been in talks with any other pharmacies aside
18 from the one you use?

19 A. Not --

20 MR. SUTHERLAND: The same objection.

21 THE WITNESS: Okay. Not to my personal
22 knowledge.

23 MS. LEONARD: Okay. Let's maybe just
24 take a quick break.

25 MR. SUTHERLAND: Long enough to go

1 across the hall.

2 MS. LEONARD: Yeah, basically.

3 THE VIDEOGRAPHER: We are going off the
4 record. The time is 1:24 p.m.

5 (A short break.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 1:33 p.m.

8 BY MS. LEONARD:

9 Q. All right. I'm going to take us to Exhibit
10 1, which is the protocol. Let's go to Page 8 of
11 this exhibit. Do you see on Page 8 there's a
12 definition of the execution team about a third of
13 the way down the page?

14 A. Yes.

15 Q. Without identifying them, do you know who
16 fills each of the roles listed in that definition?

17 A. I don't know all of them by name.

18 Q. Which roles do you not know who fills --

19 A. Escort officers. I'm not sure about the
20 facility maintenance supervisor or the ITS security
21 systems technician. I don't know every one on the
22 extraction team. That's pretty much it.

23 Q. How many people total are on the execution
24 team?

25 A. I don't have a number. I don't know how many

1 are on the extraction team. And you see the escort
2 officers, I don't know how many those are, how many
3 technicians.

4 Q. Do you know whether each role is always
5 filled by the same individual?

6 A. Not necessarily, no.

7 Q. Let's go to Page 10. Have you seen this
8 blueprint before today?

9 A. I have.

10 Q. What for?

11 MR. SUTHERLAND: Object to the form.

12 THE WITNESS: Okay. I mean, I'm
13 familiar with the execution protocol, and that's
14 part of it.

15 BY MS. LEONARD:

16 Q. When did you most recently review this
17 diagram?

18 A. I've reviewed the protocol in total in
19 preparation for this deposition.

20 Q. So within the past couple of days?

21 A. Uh-huh.

22 Q. And you testified earlier that you have been
23 present at Tennessee executions?

24 A. Not present in the witness room or the
25 Capital Punishment Unit. I've been in the warden's

1 office.

2 Q. Okay. And that's located outside of the
3 Capital Punishment Unit on this page; is that right?

4 A. Right.

5 Q. And is that in a completely separate
6 building?

7 A. Uh-huh.

8 Q. What were you able to see from your location
9 in the warden's office?

10 A. It was just a closed-circuit view of what was
11 going on. I could see the preparation. I could see
12 the actual carrying out of the execution.

13 Q. Roughly how large is the screen that you were
14 looking at?

15 A. It was just a regular computer screen.

16 Q. So like roughly the size of that laptop, for
17 example?

18 A. Maybe a little larger than that. It wasn't a
19 laptop. It was a monitor but, you know, a little
20 larger than that. A normal desktop.

21 Q. Maybe a 14- or 15-inch screen --

22 A. It could be, yeah.

23 Q. -- or something like that?

24 A. Uh-huh.

25 Q. And what was -- what did the screen show you

1 when you were looking into it?

2 MR. SUTHERLAND: So, I guess, are you
3 talking generally?

4 MS. LEONARD: Yeah.

5 BY MS. LEONARD:

6 Q. What was the view? So, you know, let me try
7 to explain this a little better. What part of the
8 execution chamber could you see through the camera?

9 A. Pretty much the entire execution chamber.

10 Q. So with reference to this diagram -- sorry.
11 I don't mean to interrupt you, but maybe this will
12 make it easier -- you could see -- and this says
13 execution chamber on Page 10 -- you could see mostly
14 that whole area. Is that what you mean?

15 A. Yes.

16 Q. Where is the camera located in the execution
17 chamber that feeds to the screen that you could see?

18 A. I'm not --

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: Sorry. I'm not sure about
21 that, and there are other views that feed into it so
22 that can be changed, but I can't say specifically
23 where that camera is.

24 BY MS. LEONARD:

25 Q. Is there only one screen in the warden's

1 office?

2 A. Yes.

3 Q. How many different views could feed into that
4 one screen?

5 A. I don't know. Two or three at least.

6 Q. And what are each of those views showing you?

7 A. Just different areas. I'm not sure if that
8 includes the death watch area, but it's primarily
9 the execution chamber. And that's something that
10 can be zoomed in on or, you know, zoomed out.

11 Q. Who controls the zooming on the camera?

12 A. The Commissioner.

13 Q. Does anyone else ever control that?

14 A. Not that I've seen.

15 Q. Is the Commissioner in the warden's office
16 with you during an execution?

17 A. Right. Yes.

18 Q. And so he controls the camera right from
19 there?

20 A. Uh-huh.

21 Q. Is there more than one camera in the
22 execution chamber that feeds to the screen in the
23 warden's office?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: And, again, I don't know.

1 BY MS. LEONARD:

2 Q. When you are watching the screen, does it
3 ever flip to a different view, say, you know, one --
4 in one minute you're looking at it and you're seeing
5 a view from the right side of the gurney, but then
6 there's a view that's on the left side of the
7 gurney? Does that ever happen?

8 A. I don't recall that ever happening.

9 Q. So it's more just a single view or a single
10 angle, but then that could be zoomed in on?

11 A. Uh-huh.

12 Q. Okay. So, for example, if it -- I'm not
13 saying this is what it is but if it's on the
14 gurney's right side, it doesn't switch that view but
15 it could go, say, zoom in on the IV site, for
16 example?

17 A. Yes, not -- not as closeup as the camera --
18 the pan tilt zoom camera in the executioner's area.

19 Q. Okay.

20 A. But, yeah, we can zoom in.

21 Q. Right. And so roughly what can you see
22 during the execution on that 14- or 15-inch video
23 screen?

24 A. Well, we can see the gurney go in, zoom in on
25 whatever is going on. We can see the warden,

1 associate warden of security. We can see the EMTs
2 starting the catheter, getting the IV started,
3 pretty much, you know, everything that goes in --
4 goes on in the chamber itself.

5 Q. Can you see anything that goes on in the
6 lethal injection room?

7 A. No.

8 Q. Can you see anything that goes on in either
9 of the witness rooms?

10 A. I think there is a view. Yes. You can see
11 the witness rooms.

12 Q. What are you able to hear from the warden's
13 office during an execution?

14 A. There's no audio.

15 Q. So you can't hear anything?

16 A. Right.

17 Q. Why is there no audio to the warden's office?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: I don't know.

20 BY MS. LEONARD:

21 Q. Who else was with you in the warden's office
22 during the executions?

23 MR. SUTHERLAND: Don't identify anyone
24 by name.

25 THE WITNESS: Okay. The -- there is

1 sometimes a representative from the Governor's
2 office.

3 BY MS. LEONARD:

4 Q. Sometimes but not always?

5 A. There might have been a time or two when
6 there wasn't, so I don't want to say a hundred
7 percent every time that they've been there but
8 usually they are.

9 Q. So it's you, the Commissioner, usually a
10 representative from the Governor's office. Anyone
11 else?

12 A. The drug procurer sometimes.

13 Q. He's sometimes with you in the warden's
14 office?

15 A. Uh-huh.

16 Q. Anyone else?

17 A. No.

18 Q. Is there anyone from the AG's office in the
19 warden's office with you?

20 A. No.

21 Q. Why are you watching the execution on the
22 closed-circuit TV?

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: Okay. Just so we can see
25 or -- or I know the Commissioner wants to see that

1 everything is proceeding without any issues.

2 BY MS. LEONARD:

3 Q. And if something were to arise, what would
4 happen?

5 MR. SUTHERLAND: Object to the form.

6 THE WITNESS: I mean, I really can't
7 answer that without like a specific scenario.

8 BY MS. LEONARD:

9 Q. Sure. So if there were a problem, like the
10 one you described earlier in Oklahoma with accessing
11 a vein --

12 A. Uh-huh.

13 Q. -- what would the Commissioner do?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: Well, that's -- that's
16 never happened so I don't want to speak for what the
17 Commissioner would do.

18 BY MS. LEONARD:

19 Q. Is there a scenario in which the Commissioner
20 would call off an execution?

21 MR. SUTHERLAND: Object to the form.

22 THE WITNESS: I can't say that there's
23 no circumstance where that would happen, but I don't
24 know of any particular circumstance where that would
25 happen.

1 BY MS. LEONARD:

2 Q. Okay. But that's the purpose --

3 A. It would be, you know, based on whatever the
4 scenario was. He'd make that decision.

5 Q. Okay. Sure. So that's why -- I'm just
6 trying to understand. So he's watching on the
7 closed-circuit TV so that he can make that decision,
8 if need be?

9 A. That would help --

10 MR. SUTHERLAND: Object to the form.

11 THE WITNESS: Sorry. That would help
12 him make that decision.

13 BY MS. LEONARD:

14 Q. And does the Commissioner make that decision
15 alone?

16 MR. SUTHERLAND: The same objection.

17 THE WITNESS: We've never had that
18 situation arise.

19 BY MS. LEONARD:

20 Q. Do you have the authority to call off an
21 execution?

22 A. No.

23 Q. Does anyone else have the authority to call
24 off an execution aside from the Commissioner?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: The Governor.

2 BY MS. LEONARD:

3 Q. And how does -- how do the people in the
4 warden's office during an execution communicate with
5 the Governor?

6 A. By telephone.

7 Q. And does the representative from the
8 Governor's office have the Governor proxy to call
9 off the execution?

10 MR. SUTHERLAND: Object to the form.

11 THE WITNESS: No, I don't think so.

12 BY MS. LEONARD:

13 Q. Who speaks over the phone with the Governor?

14 A. The Commissioner.

15 Q. Do you ever speak with the Governor over the
16 phone?

17 A. No.

18 Q. Do you ever consult with the Commissioner as
19 to whether to call off an execution?

20 MR. SUTHERLAND: So are you talking
21 about hypothetically?

22 MS. LEONARD: Uh-huh.

23 MR. SUTHERLAND: I mean, we're starting
24 to get into conversations that the Commissioner and
25 his lawyer might have without regard to any facts.

1 So, I mean --

2 MS. LEONARD: I'll ask a different -- I
3 will ask a different question.

4 MR. SUTHERLAND: That's fine.

5 BY MS. LEONARD:

6 Q. Why are you in the warden's office during an
7 execution?

8 A. I'm there in case legal issues arise. It
9 could be something like a request from a religious
10 adviser. It could just vary and questions about,
11 for example, once we had a victim's family member
12 coming to see the execution but did not have the
13 proper ID and so --

14 MR. SUTHERLAND: Yeah. Let me just
15 interrupt you. Let's -- I don't want you to discuss
16 any specific communications you had with the
17 Commissioner about legal advice that you gave him or
18 a representative at TDOC --

19 THE WITNESS: Okay.

20 MR. SUTHERLAND: -- under
21 attorney-client privilege to the extent that it has
22 occurred since July or August of '18.

23 BY MS. LEONARD:

24 Q. So did this incident with the forgotten ID
25 take place before July 2018?

1 A. I don't remember. I don't remember which
2 execution it was.

3 Q. How many lethal injection executions has
4 Tennessee carried out since the adoption of this
5 protocol?

6 A. I think just two.

7 Q. And do you recall roughly when those
8 executions took place?

9 A. The summer of 2019. Don't hold me to the
10 date.

11 Q. If I told you August 2018 and May 2019, would
12 that sound right?

13 A. That could be, yeah.

14 Q. Okay. And you don't remember which of
15 those -- do you remember if it was at one of those,
16 that this person had the forgotten ID issue?

17 A. No, I don't know.

18 Q. When was the last time that Tennessee
19 executed someone by lethal injection prior to those
20 two executions?

21 A. I don't have that date or year. Sorry.

22 Q. And you testified earlier that you have not
23 attended any executions outside of Tennessee?

24 A. No. No actual executions.

25 Q. Have you toured the chambers in other states?

1 A. A couple of jurisdictions.

2 Q. Okay. But you've never been to an actual --
3 a live execution?

4 A. Correct.

5 Q. Have you had discussions with the Governor
6 about executions that are not related to legal
7 issues?

8 A. No.

9 Q. Have you had discussions with the
10 Commissioner about executions not related to legal
11 issues?

12 A. No. All those discussions would be in my
13 capacity as General Counsel.

14 Q. Okay. Let's go to Page 13 of Exhibit 1.

15 A. (Complies.)

16 Q. If you'd flip through the next of couple
17 pages between Pages 13 and 29, you'll see it looks
18 like it's -- a listing of the primary role and the
19 various duties of these players in the execution
20 process. Does that look right to you?

21 A. Uh-huh. Yes.

22 Q. Why is it that the executioner is not listed
23 on any of these pages?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: I don't know. Although,

1 the executioner's duties are pretty well spelled out
2 in the protocol.

3 BY MS. LEONARD:

4 Q. So where does the executioner get his
5 understanding of his role and duties?

6 A. It would be in Section 5.

7 Q. So is that the section about the procurement
8 and the preparation of the chemicals?

9 A. Uh-huh. And the introduction.

10 Q. Did you create the role of executioner?

11 A. No, I did not.

12 Q. Who created that role?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: I don't know. I mean,
15 we've always had an executioner since the time I
16 joined the Department.

17 BY MS. LEONARD:

18 Q. That's one of the sections that you did not
19 revise when you drafted this protocol?

20 A. No.

21 MR. SUTHERLAND: The same objection.

22 THE WITNESS: No. The same objection?

23 Okay. No. They were --

24 MR. SUTHERLAND: I'm sorry. What's the
25 question?

1 BY MS. LEONARD:

2 Q. I can -- I can do a better job of phrasing
3 that. Before lunch, I believe, you testified that
4 when you were drafting this protocol, you took much
5 of it from previous iterations of the protocol; is
6 that right?

7 A. Right.

8 Q. And you identified Section 5 about the
9 procurement of chemicals as the only section that
10 had major revisions?

11 A. Yeah. I believe that was the only one with
12 major revisions.

13 Q. Okay. And so what I'm asking is: Did you
14 take this section of the protocol from previous
15 iterations or did you write this from scratch and --
16 to lead up to July of 2018?

17 A. No. We didn't draft it from scratch. What
18 are you pointing to when you say "this section"?

19 Q. This section, the Section 13 through 29,
20 which seems to be the roles and the duties of each
21 of these --

22 A. Oh.

23 Q. -- individuals?

24 A. I don't think there were any revisions to
25 that section with the July 2018 revision.

1 Q. Okay. So this -- I understand there might
2 have been typographical errors or other minor
3 revisions, but there were no major substantive
4 revisions to these roles or duties?

5 A. No. There -- at some point the title of the
6 Director of Communications and Public Relations
7 changed. I don't know exactly when that was.
8 Assistant Commissioner of Prisons has -- has had a
9 different title at some point. So I don't -- but I
10 don't -- we would have updated things like that.

11 Q. Okay. Let's go to Page 32. And this says:
12 Training of execution team members at the top.

13 A. Uh-huh.

14 Q. Item 1 says: All execution team members must
15 read the lethal injection execution manual when they
16 become members of the execution team. Do the
17 execution team members receive any additional
18 reading materials?

19 MR. SUTHERLAND: Objection to form.

20 THE WITNESS: Not that I'm aware of.
21 Just not to my knowledge.

22 BY MS. LEONARD:

23 Q. Do they receive any other training?

24 A. Yes. I mean, it depends on their role.

25 Q. Who -- so you are largely responsible for the

1 drafting of this lethal injection execution manual;
2 is that right?

3 MR. SUTHERLAND: Objection to the form.

4 THE WITNESS: I wouldn't say that I was
5 primarily responsible for the actual content. You
6 asked earlier was I the one, you know, doing the
7 typing and I was, but I was getting input.

8 BY MS. LEONARD:

9 Q. Okay. The same section says: Additionally,
10 the warden or designee holds a class during which
11 the manual is reviewed and clearly understood by all
12 participants. Do you know what this class is?

13 A. Nothing other than, you know, what it says.
14 They'd be in a room, and they review the protocol.

15 Q. Is the class simply reading the entire
16 protocol out loud from start to finish?

17 MR. SUTHERLAND: Objection to the form.

18 THE WITNESS: Okay. I don't know that.
19 I haven't been present at those classes.

20 BY MS. LEONARD:

21 Q. You've never attended one of these classes?

22 A. Not -- not the specific one that's being
23 referred to here.

24 Q. Which classes have you been to?

25 A. I have been to run-throughs, practices on

1 occasion.

2 Q. Is that what's referenced in Item 2 on this
3 page?

4 A. Yes.

5 Q. Where it says: The execution team simulates
6 Day 3 of the death watch and the steps outlined in
7 Section 4 for at least one hour each month?

8 A. Yes.

9 Q. How many of those sessions have you attended?

10 A. Since when?

11 Q. Ever. Total.

12 A. Since 1994? I couldn't hazard a guess.

13 Q. Several per year, would you say?

14 A. Some years, yes, and then some years not at
15 all.

16 Q. Does it depend on how many executions are
17 carried out in any given year?

18 A. The number of walk-throughs that they have
19 does depend on the number of executions that are
20 coming up. It gets more frequent at that point.

21 Q. What determines whether you personally
22 attend?

23 A. It would just be my decision.

24 Q. So you're not required to attend those?

25 A. No.

1 Q. Why do you attend?

2 A. So I'm familiar with the process. And
3 occasionally there are other people who might need
4 to see it -- see one of those to get a better
5 understanding of the process.

6 Q. To see one of those sessions --

7 A. Uh-huh.

8 Q. -- one of the trainings?

9 A. Uh-huh.

10 Q. And then --

11 A. The -- the practices --

12 Q. So you --

13 A. -- which it does constitute training, but
14 it's not the -- it's not the class you're talking --
15 you referred to in Section 1.

16 Q. Right. I understand. So you're saying that
17 somebody might need to see this practice session?

18 A. Right.

19 Q. And you would be the person that would
20 accompany that person?

21 A. It would depend on who it was.

22 Q. Okay. How does TDOC know that the
23 participants are clearly understanding the manual?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: Okay. I can't speak for

1 the warden on that.

2 BY MS. LEONARD:

3 Q. So you're not sure how they assess the
4 understanding of the execution team?

5 MR. SUTHERLAND: The same objection.

6 BY MS. LEONARD:

7 Q. Is there any type of assessment that follows
8 the class?

9 MR. SUTHERLAND: The same objection.

10 THE WITNESS: I don't know.

11 BY MS. LEONARD:

12 Q. And then jumping back to Point 2, it says
13 that the simulation includes all steps of the
14 execution process with the following exceptions, and
15 A is that volunteers play the roles of the condemned
16 inmate and the physician. Have you ever been one of
17 those volunteers?

18 A. No.

19 Q. Why not?

20 A. I've never been asked to.

21 Q. Would you do it if you were asked?

22 A. If they needed me to, yes.

23 Q. Who were the volunteers, not identifying them
24 by name?

25 A. Correctional personnel.

1 Q. And then three says that all training that
2 occurs is documented. Who's responsible for keeping
3 the documentation?

4 A. Ultimately the warden.

5 Q. Where is that documentation kept?

6 A. The warden's secretary has it.

7 Q. Is that in his office?

8 A. Yes.

9 Q. What is the documentation used for?

10 A. To document that they've had the training.

11 Q. And do you ever review the documentation?

12 A. Occasionally I've had to respond to public
13 records requests and discovery so I've seen them.

14 Q. Have you ever reviewed it for any other
15 purpose other than responding to a records request
16 or discovery?

17 A. Not that I recall.

18 Q. Is the documentation ever used in training?

19 A. No. The documentation is just a roster, and
20 it documents the date and time of the training and
21 who attended it.

22 Q. Okay. And the bottom of the page does have a
23 special section for the executioner that it seems
24 you alluded to earlier saying that the executioner
25 receives initial and periodic instruction from a

1 qualified medical professional?

2 A. Uh-huh.

3 Q. Without giving me a name, who is that
4 qualified medical professional?

5 A. That can be a physician or an EMT, depending
6 on the particular topic.

7 Q. Is it not always the same person?

8 A. I can't say for sure whether it's always been
9 the same person.

10 Q. If it's a doctor, is it the doctor who's
11 named as the physician on the execution team?

12 MR. SUTHERLAND: Object to the form.

13 THE WITNESS: I believe so, yes.

14 BY MS. LEONARD:

15 Q. And I'm going to ask the same question I
16 asked about the last section. Was this section
17 revised substantively in the lead up to issuing the
18 2018 protocol?

19 A. Nothing stands out to me as being something
20 that's been revised for the 2018 protocol.

21 Q. Okay. So all of this was also the same with
22 the one-drug, pentobarbital, protocol?

23 A. I think so.

24 Q. Okay. Let's go to Page 34. How is the
25 dosage amount of each chemical determined?

1 MR. SUTHERLAND: Objection to form.

2 THE WITNESS: Can you clarify the
3 question?

4 BY MS. LEONARD:

5 Q. Sure. You see on Page 34 it says: The
6 Department will use the following protocol for
7 carrying out executions by lethal injection, and
8 then it lists a certain amount of each of the three
9 drugs. Who came up with each of those amounts?

10 MR. SUTHERLAND: Don't identify the
11 person.

12 THE WITNESS: I don't recall
13 specifically who did.

14 BY MS. LEONARD:

15 Q. Was it someone from inside TDOC?

16 A. I think it would be based on other states'
17 protocols and input from the former pharmacy owner.

18 Q. Did you copy this directly out of another
19 state's protocol?

20 MR. SUTHERLAND: Objection to the form.
21 You can answer.

22 THE WITNESS: Yeah. I don't recall if
23 that's -- you know, if another state's protocol was,
24 you know, in front of me and I used that or if it
25 was guidance from the former pharmacy owner.

1 BY MS. LEONARD:

2 Q. You didn't consult with any outside experts
3 about these amounts?

4 A. Not a medical expert.

5 Q. How about a pharmacy expert?

6 A. Well, yes, and then also other correctional
7 professionals in other jurisdictions.

8 Q. Sure. What type of pharmacy experts did you
9 consult?

10 A. Well --

11 MR. SUTHERLAND: Are we talking about --
12 and, again, just to clarify. Her personally or the
13 Department?

14 BY MS. LEONARD:

15 Q. Yes, you personally?

16 A. No, I did not.

17 Q. Okay. So you just copied this out of another
18 state's protocol?

19 A. I think, you know, I testified I don't recall
20 what I copied it from or that, you know, the source
21 of it.

22 Q. Okay. But you personally didn't ask anybody
23 whether these amounts had any grounding in science?

24 A. I did not.

25 Q. Or in medicine?

1 A. I did not.

2 Q. Or in pharmacy?

3 A. I did not.

4 Q. Is midazolam FDA approved as the sole drug to
5 produce and maintain anesthesia?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: Yeah. I'm not a medical
8 expert, and I don't know the answer to that.

9 BY MS. LEONARD:

10 Q. Are the drugs that you use for executions
11 compounded?

12 A. Some are.

13 Q. Which ones?

14 A. The midazolam and the potassium chloride now.

15 Q. And is the vecuronium bromide manufactured
16 then?

17 A. That's my understanding.

18 Q. Why is the vecuronium bromide manufactured?

19 A. Because --

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: Okay. Sorry. Because
22 it's available in that form.

23 BY MS. LEONARD:

24 Q. And the other two drugs are not available in
25 that form?

1 A. Right.

2 Q. Okay. And if the midazolam and the potassium
3 chloride were available as manufactured drugs, would
4 TDOC be using those instead of the compounds?

5 A. Probably so, but that would be the
6 Commissioner's call.

7 Q. Would TDOC ever use expired drugs for an
8 execution?

9 A. No.

10 Q. Why not?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: Because they would be
13 expired. We don't -- we want to use effective
14 drugs.

15 BY MS. LEONARD:

16 Q. Then what makes you think that the expired
17 drugs would be ineffective?

18 A. We would have to -- I mean, we know they're
19 effective if they have not expired. If they had
20 expired, they would have to be tested, and we've
21 never had to do that. We just don't use expired
22 drugs at all.

23 Q. So once you have the -- once the drugs
24 expire, what do you do with them?

25 A. They're disposed of.

1 Q. On the next page, Page 35, it says on the
2 first number there under Storage of LIC: When the
3 LIC is received, a member of the execution team and
4 the warden take the LIC to the armory area of
5 Building 7 at RMSI. Without telling me the name,
6 which member of the execution team does this with
7 the warden?

8 A. The executioner.

9 Q. Is it always the executioner?

10 A. I can't say for certain but it generally is.

11 Q. Why is it the executioner's role to do this?

12 MR. SUTHERLAND: Object to the form.

13 THE WITNESS: The executioner is going
14 to be the one to prepare the drugs and administer
15 the drugs, and so the executioner takes the
16 responsibility of transporting the drugs.

17 BY MS. LEONARD:

18 Q. Have you personally ever seen the storage
19 container of LIC?

20 A. Yes.

21 Q. When's the last time that you saw it?

22 A. It's probably been a few years since I've
23 been in the armory. I've seen pictures, but it's
24 probably been a few years since I was physically
25 there.

1 Q. Has everyone on the execution team seen the
2 storage container?

3 A. No, not everybody on the execution team.

4 Q. Who -- who on the execution team -- again,
5 please, don't tell me their names, but identifying
6 by roles on the execution team, has seen that
7 storage container?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: Okay. The executioner,
10 the warden, associate warden, other -- other
11 folks -- it could be other folks who are present in
12 the executioner's room. Again, I -- you know,
13 you're asking me something -- I'm not out there
14 every day. I don't know.

15 BY MS. LEONARD:

16 Q. Let's flip to Page 39.

17 A. (Complies.)

18 Q. Number 4 on that page says: Preparation in
19 accordance with the directions of the pharmacy with
20 which the department has a pharmacy services
21 agreement to create one set of syringes as follows,
22 and then it lists the instructions there. Does the
23 execution team have written instructions on how to
24 prepare each of the three drugs?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: Okay. They've had
2 training on all of them. They have specific
3 directions for preparing the compounded chemicals.

4 BY MS. LEONARD:

5 Q. So that's for the midazolam and the potassium
6 chloride?

7 A. Uh-huh.

8 Q. Where do those instructions come from?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: The pharmacist.

11 BY MS. LEONARD:

12 Q. And is that -- does the pharmacist include
13 those with every shipment of the drugs?

14 MR. SUTHERLAND: The same objection.

15 THE WITNESS: I can't say for sure.

16 BY MS. LEONARD:

17 Q. Is that something that the pharmacist only
18 gave the execution team once, and they refer to the
19 same set?

20 MR. SUTHERLAND: The same objection.

21 THE WITNESS: I know that at least one
22 set of instructions has been updated. But, yes, if
23 there needed to be changes, the pharmacy --
24 pharmacist would provide revised instructions.

25 / /

1 BY MS. LEONARD:

2 Q. Have they been updated more than once?

3 A. No, I don't think so.

4 Q. Do you play any role in helping create these
5 instructions?

6 A. No.

7 Q. Is there any conflict between these
8 instructions and the protocol?

9 A. Well, to the extent the protocol provides
10 that they are prepared in accordance with the
11 instructions, then no.

12 Q. So why is it that it says that the
13 preparation should be in accordance with the
14 directions of the pharmacy but then nevertheless
15 provides its own set of instructions here?

16 MR. SUTHERLAND: What instructions are
17 we talking about?

18 MS. LEONARD: If you're looking at Pages
19 39 and 44 [sic], small letters A, B, C, D, E, F.

20 MR. SUTHERLAND: Okay.

21 THE WITNESS: 39 and 40?

22 MS. LEONARD: Yeah. So under where it
23 says: Preparation in accordance with the
24 directions -- I guess, what I'm wondering is why
25 doesn't the sentence just end there, Preparation in

1 accordance with the directions of the pharmacy with
2 which the Department has a pharmacy services
3 agreement to create one set of syringes as follows,
4 full stop, period. Why is it that A through F are
5 in the protocol?

6 MR. SUTHERLAND: Object to the form.

7 THE WITNESS: Okay. I think probably
8 for transparency. This is also sort of -- it's a
9 public document except for the section that deals
10 with security and so that's why -- that's why it's
11 set out here what we use and how much.

12 BY MS. LEONARD:

13 Q. Okay. But to the extent that A through F
14 conflict with the operative version of the
15 pharmacist's instructions, the pharmacist's
16 instructions would rule?

17 A. Yes.

18 Q. And who made that determination?

19 A. What determination?

20 Q. That to the extent there's a conflict between
21 the instructions and A through F on Pages 39 through
22 40, the pharmacist's instructions would rule?

23 A. First of all, I'm not aware that there is a
24 conflict. But to the extent this is the
25 Commissioner's protocol, it would be the

1 Commissioner.

2 Q. And how do you ensure that the executioner's
3 qualified to follow the pharmacist's instructions?

4 MR. SUTHERLAND: Object to the form.

5 THE WITNESS: Okay. I personally do not
6 do that. That's not my role.

7 BY MS. LEONARD:

8 Q. Do you believe that the executioner is
9 qualified to follow the instructions?

10 A. I do.

11 MR. SUTHERLAND: The same objection.

12 BY MS. LEONARD:

13 Q. And why do you believe that?

14 A. Because of the executioner's experience and
15 training.

16 Q. And when you were drafting this section,
17 where did the information come from that you used to
18 draft this?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: Okay. I think with the
21 exception of the particular drugs, this came from
22 prior versions.

23 BY MS. LEONARD:

24 Q. So you're saying that on Page 39, Items 1
25 through 3, came from prior sections and then on Page

1 45 through 7 came from prior sections?

2 A. I don't see anything different from prior
3 versions.

4 Q. Okay. So the only thing that's substantively
5 new is basically what's included in Item 4 on Pages
6 39 and 40?

7 A. Yeah. I think that was probably the only
8 revision, and it would have been updated to
9 (inaudible) midazolam.

10 Q. And where did you get that portion of these
11 pages from?

12 MR. SUTHERLAND: The same objection.

13 THE WITNESS: Okay. Can you clarify
14 what -- what portion are you talking about?

15 BY MS. LEONARD:

16 Q. Sure. Item 4, Steps A through F, where did
17 that come from?

18 A. Well, as I indicated most of that appears to
19 be the same as from previous versions.

20 Q. Except for the midazolam portion?

21 A. Right.

22 Q. And so where did the midazolam portion come
23 from?

24 MR. SUTHERLAND: The same objection.

25 THE WITNESS: It would have been based

1 on sort of the prior three-drug protocol but with
2 information from other protocols and the pharmacy --
3 former pharmacy owner.

4 BY MS. LEONARD:

5 Q. Were you in touch directly with the former
6 pharmacy owner about these instructions?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: I was not.

9 BY MS. LEONARD:

10 Q. Only the drug procurer was in touch directly
11 with the former pharmacy owner?

12 MR. SUTHERLAND: The same objection.

13 THE WITNESS: I can't say that for sure,
14 but that was the primary role.

15 BY MS. LEONARD:

16 Q. Okay. So you got these instructions from the
17 drug procurer who got them from the former pharmacy
18 owner?

19 MR. SUTHERLAND: The same objection.

20 THE WITNESS: Okay. Are you talking
21 specifically about midazolam?

22 BY MS. LEONARD:

23 Q. Yes.

24 A. I think that's probably the case.

25 Q. Okay. Let's go to Page 42. Who makes the

1 decision to call the physician into the chamber to
2 perform a cut-down procedure?

3 A. That would probably be the warden.

4 Q. And why do you say "probably"?

5 A. We've never had to do that.

6 Q. But if it were to arise, you would think that
7 the warden would do that?

8 A. I do. The warden would be there, you know,
9 present in the chamber, and seeing the difficulty in
10 getting IV started.

11 Q. And was it or why is it that the physician
12 doesn't attempt to insert a central line before
13 performing a cut-down?

14 A. Well --

15 MR. SUTHERLAND: I object to the form.
16 You can answer.

17 THE WITNESS: I believe the protocol
18 somewhere allows the physician to decide how they
19 would do that.

20 BY MS. LEONARD:

21 Q. Let's go to Page 44. Why are the prisoner's
22 hands taped to the arm support?

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: To prevent them from
25 moving. It's to stabilize the inmate's arm.

1 BY MS. LEONARD:

2 Q. What type of movement are you seeking to
3 prevent?

4 A. Anything that would interfere with the
5 access.

6 Q. Are you aware that taping the inmate's hands
7 down could interfere with the consciousness check?

8 A. No.

9 Q. Are you aware that moving a finger is an
10 indication of consciousness?

11 A. Not specifically.

12 Q. Okay. Let's go to Page 66.

13 A. (Complies.)

14 Q. About halfway down the page in Section 6
15 there, it says: The warden shall wait two minutes
16 following the administration of midazolam and the
17 saline flush before assessing the consciousness of
18 the inmate. Why is this waiting period two minutes?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: I don't remember where
21 specifically two minutes came from, but that is to
22 give -- give time for the drugs to take effect.

23 BY MS. LEONARD:

24 Q. And you don't remember why two minutes was
25 selected?

1 A. I don't. There might -- that might have been
2 mentioned in another protocol. Possibly mentioned
3 in case law that, you know, described a particular
4 protocol that was under review. I just can't say
5 for sure.

6 Q. But in the next section, Number 7, describes
7 basically what we're calling the consciousness
8 check. Do you want just a moment to read that
9 section? It's a little lengthy.

10 A. (Reviewing document.) Okay.

11 Q. What does it mean to be unconscious as used
12 in this paragraph?

13 MR. SUTHERLAND: Object to the form.

14 THE WITNESS: Insensate, I think, is
15 what that's referring to.

16 BY MS. LEONARD:

17 Q. How can you tell whether a person is
18 insensate versus unresponsive?

19 MR. SUTHERLAND: The same objection.

20 THE WITNESS: I think the -- if they're
21 not responding to stimulus, that indicates that
22 they're insensate. Again, I'm not a medical
23 professional.

24 BY MS. LEONARD:

25 Q. So your understanding is that

1 unresponsiveness necessarily indicates insensate?

2 A. I would --

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: Yeah. I'd leave that to
5 medical experts.

6 BY MS. LEONARD:

7 Q. Did you type up this section?

8 A. It's possible that I did at the point we
9 added the consciousness check.

10 Q. And where did you get this information from?

11 A. We did talk to a physician who recommended a
12 few things and then another physician about the
13 trapezius muscle and probably other protocols, and
14 I'm not sure what consciousness check is in the Baze
15 opinion. But, you know, I can't sit here today and
16 tell you, you know, anymore than that really. I
17 know we had input from two physicians.

18 Q. Was one of those physicians the physician who
19 was involved with the execution team?

20 A. No.

21 Q. So both of those physicians were two other
22 outside individuals who are not involved with the
23 executions in any other way?

24 A. They -- one of them had been involved in the
25 past and has -- hasn't been involved in a while.

1 And then, yes, another one is not involved in the
2 executions.

3 Q. Are either or both of these doctors
4 anesthesiologists?

5 A. No.

6 Q. Did either or both of these doctors explain
7 any medical standards related to checking for
8 consciousness to you?

9 A. Not to me personally.

10 Q. Are you aware of any medical standards really
11 to checking for consciousness?

12 A. Well, I think, these are examples that
13 physicians gave us as ways to check for
14 consciousness and sedation.

15 Q. And did you do any other independent research
16 on checking for consciousness?

17 A. I -- I might have at some point, but I didn't
18 rely on -- on my research because, again, I'm not
19 qualified. I'm not a medical professional.

20 Q. And so you relied on the advice of the two
21 doctors you spoke with and that's it?

22 A. That's in part.

23 Q. What else?

24 A. It could -- could have included reviewing
25 other protocols.

1 Q. But you're not sure?

2 A. No. I've done this for a long time, and they
3 all kind of -- everything kind of blurs together
4 when you're talking about when did we add a certain
5 thing and, you know, what did I do at that moment?

6 Q. Are the members of the execution team trained
7 in medical standards for assessing consciousness?

8 MR. SUTHERLAND: Object to the form.

9 THE WITNESS: By "execution team" you
10 mean the whole team?

11 BY MS. LEONARD:

12 Q. Or anyone on it?

13 A. The warden is trained.

14 Q. Is he the only one who's trained?

15 A. He's probably the only one specifically
16 trained for that.

17 Q. Who trains the warden in the consciousness
18 check?

19 MR. SUTHERLAND: Don't identify anybody
20 by name.

21 THE WITNESS: I won't. A physician did.

22 BY MS. LEONARD:

23 Q. And when's the last time that the warden
24 received that training?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: I don't know.

2 BY MS. LEONARD:

3 Q. Is there any requirement for how frequently
4 the warden has to be trained in checking for
5 consciousness?

6 A. No. He would have been trained when this
7 consciousness check was added.

8 Q. So that could have been --

9 A. And then -- and then when it -- I think it
10 was revised to include the trapezius muscle check.

11 Q. When was that revision made?

12 A. I don't -- I don't have a date on that.

13 Q. Was that after July of 2018?

14 A. No, it was probably before.

15 Q. Okay. So -- so it's possible that the warden
16 hasn't been trained in checking consciousness since
17 the summer of 2018?

18 MR. SUTHERLAND: Object to the form.

19 THE WITNESS: You know, I -- I would
20 really rely on what the, you know, the warden would
21 say about that. But also these are pretty basic
22 checks for consciousness that probably does not
23 require ongoing, you know, updated training.

24 BY MS. LEONARD:

25 Q. Why did you add the consciousness check?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: Okay. That was to ensure
3 that the first drug had rendered the inmate
4 insensate before we began with the other two drugs.

5 BY MS. LEONARD:

6 Q. When Tennessee was previously using a
7 three-drug protocol, was the consciousness check
8 included at that time?

9 MR. SUTHERLAND: Object to the form.

10 THE WITNESS: Okay. I know at some --
11 for some period there was not a consciousness check.
12 I'm going to have trouble remembering today if that
13 was -- I think it was added before 2018 when we
14 had -- when we had a three-drug protocol. But it
15 was not in place the entire time we had a three-drug
16 protocol.

17 BY MS. LEONARD:

18 Q. Okay. So what you're saying is this is
19 not -- July 5th, 2018, is not the first time the
20 consciousness check ever appeared --

21 A. Right.

22 Q. -- in a Tennessee protocol? But you can't
23 remember when exactly --

24 A. I think that's correct.

25 Q. Okay. Let's go to Page 69.

1 A. Okay.

2 Q. This says contingency issues at the top, and
3 then there's about half a page of writing. Are the
4 contingency issues listed on this page the only
5 contingency issues that the execution team is
6 prepared to address?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Those are the only
9 specific ones mentioned in the protocol. If any
10 other contingency issues came up, I think the warden
11 would seek guidance from the Commissioner.

12 BY MS. LEONARD:

13 Q. And how would he do that?

14 A. By phone.

15 Q. So he uses the phone in the execution chamber
16 to call the Commissioner in the warden's office?

17 A. Probably so. It hasn't come up, but that's
18 available for communication.

19 Q. Does the team train for that scenario during
20 their practices --

21 MR. SUTHERLAND: Object to form.

22 THE WITNESS: Other contingencies, no.
23 I know they train on these contingencies, but again
24 we can't anticipate every contingency.

25

1 BY MS. LEONARD:

2 Q. Do they practice generally sort of the --
3 we'll call it the unknown contingency that you're
4 describing where if something comes up that can't be
5 foreseen necessarily and the warden practices
6 stopping the execution and calling the Commissioner?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: Okay. I don't know the
9 extent to which he has done that.

10 BY MS. LEONARD:

11 Q. Have you ever seen that happen in one of the
12 practices you've attended?

13 A. I haven't. I think occasionally they have
14 practiced going to the other line. But, again, I
15 can't really speak to that.

16 Q. Why is it important to address contingencies?

17 MR. SUTHERLAND: Objection to form.

18 THE WITNESS: To prepare for them. But
19 there are, you know, a lot of possible
20 contingencies, and they could not all be anticipated
21 and put into the protocol.

22 BY MS. LEONARD:

23 Q. Who came up with the three contingencies that
24 are listed on this page?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: I don't know. They've
2 been in the protocol for a long time.

3 BY MS. LEONARD:

4 Q. So this is one of the sections that was not
5 substantively revised in recent years?

6 A. Yeah. I don't think it's been revised.

7 Q. You didn't feel there's any need to revise
8 this despite changing back to a three-drug protocol
9 from being in a one-drug protocol?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: No. And this section was
12 predated to pentobarbital.

13 BY MS. LEONARD:

14 Q. So this came from the earlier three-drug
15 protocols?

16 A. Right.

17 Q. Okay. So who drafted that protocol?

18 MR. SUTHERLAND: Objection to the form.
19 Which protocol --

20 THE WITNESS: Yeah.

21 MR. SUTHERLAND: -- are we talking
22 about?

23 BY MS. LEONARD:

24 Q. The -- when you started in 1994, you had
25 indicated there was a three-drug protocol in place?

1 A. Right.

2 Q. Who drafted that protocol?

3 A. I don't know.

4 Q. Do you know around what year that was
5 drafted?

6 A. No.

7 Q. But it was certainly before 1994?

8 A. Yes.

9 Q. Okay. And this hasn't been substantively
10 updated since then?

11 A. Well, I can't say that for sure. I just know
12 that we've addressed these contingency issues for a
13 long time.

14 Q. In one of these contingencies it says that
15 the executioner would switch to the secondary IV
16 line and begin administering the second set of
17 syringes. If he does that, how much total midazolam
18 is being injected into the prisoner?

19 A. Well, it would depend on how much of the
20 midazolam from the first set got into the inmate.
21 But assuming that it all did, then it would be -- it
22 would be double the amount the protocol calls for.
23 Again, sometimes the need to switch to the other
24 line is due to maybe a problem with access.

25 Q. And do you know what the effects of that

1 quantity of midazolam are on a person?

2 A. No. I'm not a medical expert.

3 Q. Have you ever consulted with a medical
4 expert?

5 MR. SUTHERLAND: Object to the form.

6 THE WITNESS: Yeah. You'll have to be
7 more specific.

8 BY MS. LEONARD:

9 Q. Did you ask one of the two doctors you
10 mentioned a couple of minutes ago about what would
11 happen if someone were injected with that much
12 midazolam?

13 A. I don't recall that. I don't know. I know
14 in the past when we were dealing with the three-drug
15 protocol, we had -- that would be a thousand
16 milligrams total. We've had an anesthesiologist
17 advise about starting from scratch on the other arm.

18 Q. And what did that anesthesiologist say about
19 doing that?

20 A. That that was appropriate.

21 Q. Appropriate for what purpose?

22 A. To -- to start from the beginning with the
23 other set of syringes because we don't know the
24 extent to which the first drug actually made it into
25 the inmate's blood system.

1 Q. Are you aware that midazolam has a ceiling
2 effect?

3 MR. SUTHERLAND: Objection to the form.

4 THE WITNESS: I've heard that.

5 BY MS. LEONARD:

6 Q. Do you know what I mean by "ceiling effect"?

7 A. Yes.

8 Q. What's your understanding of a ceiling
9 effect?

10 A. It's the point beyond which additional
11 midazolam would not increase the effect.

12 Q. Did the anesthesiologist you consulted with
13 mention that in your discussion about switching to
14 the secondary IV line?

15 A. No.

16 Q. Did that anesthesiologist mention a ceiling
17 effect at all?

18 A. Not that I recall.

19 Q. How did you become aware that midazolam may
20 have a ceiling effect?

21 MR. SUTHERLAND: Are we talking about
22 before the adoption of the midazolam protocol?

23 MS. LEONARD: I'm talking about when
24 this was drafted.

25 MR. SUTHERLAND: Okay.

1 THE WITNESS: The 2018?

2 MS. LEONARD: Uh-huh.

3 MR. SUTHERLAND: I don't remember her
4 testifying that an anesthesiologist was consulted
5 before the 2018.

6 BY MS. LEONARD:

7 Q. Did you just testify that you talked to an
8 anesthesiologist about switching to a secondary line
9 when that person said it was appropriate?

10 A. Not for the 2018 protocol. That would have
11 been years ago when we came up with -- well, the
12 Commissioner at that time ultimately decided to
13 maintain the three-drug protocol.

14 Q. Right. Okay. So you're still --

15 A. So that's when -- that's years ago.

16 Q. But you're still relying on that knowledge in
17 answering my questions now because what I had asked
18 was, Are you aware of these things? And you said
19 you were. And I asked why, and that's what you're
20 going back to? Is that what you wanted to clarify?

21 A. You --

22 MR. SUTHERLAND: No. You were asking
23 about a ceiling effect and consulting with an
24 anesthesiologist, and I think -- my understanding is
25 I don't think there was an anesthesiologist

1 consulted about the midazolam protocol, let alone a
2 ceiling effect.

3 THE WITNESS: That's -- that's correct.
4 But you had also asked about switching from one arm
5 to the next.

6 BY MS. LEONARD:

7 Q. Right.

8 A. And starting -- how much -- you asked about
9 how much midazolam would that be, and so I was
10 referring to the concept of switching from one line
11 to the other, you know, if -- if there's still
12 consciousness.

13 Q. Right. Okay. And you had said that the
14 reason you think that switching from one arm to the
15 other is okay is because an anesthesiologist had
16 indicated that that's appropriate?

17 A. In part, yes.

18 Q. Okay. Did that anesthesiologist say anything
19 about a ceiling effect?

20 A. No.

21 Q. How do you --

22 A. Not that I recall.

23 Q. How do you know that a ceiling effect -- that
24 midazolam might have a ceiling effect?

25 A. Just through --

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: Through litigation I've
3 seen that being alleged.

4 BY MS. LEONARD:

5 Q. Okay. But no one's ever told you that --

6 A. No.

7 Q. -- in conjunction with developing one of
8 these protocols?

9 A. No.

10 MR. ATYIA: Hey, Lynne, when you get to
11 a stopping point, I need to take a real quick
12 five-minute restroom break.

13 MS. LEONARD: Yeah. We can do that now.
14 Do you want to do that now?

15 MR. ATYIA: Is that okay?

16 MS. LEONARD: Yeah.

17 THE VIDEOGRAPHER: We are going off the
18 record. The time is 2:33 p.m.

19 (A short break.)

20 THE VIDEOGRAPHER: We are back on the
21 record. The time is 2:45 p.m.

22 BY MS. LEONARD:

23 Q. Earlier you spoke about using other states'
24 protocols, I think you said, because those states
25 have been able to successfully use the protocols; is

1 that right?

2 A. Yes.

3 Q. What do you mean by "successfully"?

4 A. The using it and having everything go as
5 anticipated, that's -- that's pretty much it and,
6 you know, correctional professionals in those states
7 describing their experience.

8 Q. Would you consider it successful just based
9 on the person dying?

10 A. No.

11 Q. So what would make an execution not
12 successful?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Okay. If it didn't go as
15 planned, if there was problems with access, it could
16 be any number of things.

17 BY MS. LEONARD:

18 Q. So if using this current protocol the
19 prisoner was not unconscious following the
20 administration of midazolam and then the execution
21 team switched to the secondary IV line and continued
22 with the rest of the execution, would that be a
23 successful execution?

24 A. Yes.

25 Q. Why would you consider that successful?

1 A. Because with the second set the inmate would
2 have been rendered insensate, and there would have
3 been a consciousness check, and then the other two
4 drugs would have been -- would have proceeded. So,
5 yes, that would be successful.

6 Q. And your understanding of a person being
7 insensate is based only on unresponsiveness in the
8 consciousness check and the protocol?

9 MR. SUTHERLAND: Objection to the form.

10 THE WITNESS: Okay. Again, that -- I
11 mean, that's a medical question that's beyond my
12 expertise.

13 BY MS. LEONARD:

14 Q. Where did you -- why is it that you think
15 that being insensate is indicated by
16 unresponsiveness?

17 MR. SUTHERLAND: Objection to the form.

18 THE WITNESS: I mean, it's just
19 something I've kind of become familiar with based on
20 litigation, reading case law, talking to people
21 about the purpose of the consciousness check, the
22 purpose of the first drug. I can't get anymore
23 specific than that.

24 BY MS. LEONARD:

25 Q. Has anyone ever told you that the person

1 could be unresponsive under the consciousness check
2 but then awoken by the administration of the
3 paralytic?

4 A. No.

5 Q. You've never heard that before?

6 A. No.

7 Q. And you've never seen that in any litigation?

8 A. Not that I recall.

9 Q. Would it concern you if that were the case,
10 i.e., that the inmate was asleep, let's say, after
11 the administration of midazolam, but then the
12 administration of the paralytic woke that person up?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Okay. I've never heard
15 that scenario.

16 BY MS. LEONARD:

17 Q. Would it be concerning to you though if that
18 is what's happening?

19 A. Yes. I just am not aware that it has
20 happened, and that's why we do the consciousness
21 check.

22 Q. Right. And what I'm saying is it's possible
23 to pass the consciousness check, as it were, but
24 then be woken up by the administration of vecuronium
25 bromide, which do you know whether vecuronium

1 bromide is acidic or alkaline?

2 A. No.

3 MR. SUTHERLAND: I'm going to object to
4 the form of the question.

5 THE WITNESS: Okay. I'm sorry. No.
6 You're getting beyond my expertise.

7 BY MS. LEONARD:

8 Q. Okay. So the administration of vecuronium
9 bromide is a pretty serious event on the human body
10 arguably at least more severe than the trapezius
11 squeeze or the eyelash brush or anything else listed
12 in the consciousness check. So would it concern you
13 to know that the prisoner may wake up and become
14 sensate again with the administration of the
15 vecuronium bromide?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: Okay. I don't know that
18 at all. I mean, I don't know what else to say.

19 BY MS. LEONARD:

20 Q. I understand that you're saying you don't
21 know that that's what happens. But if an expert
22 were to tell you that, would you be concerned?

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: It would depend on what
25 other experts also said.

1 BY MS. LEONARD:

2 Q. And why would that concern you?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: Because the purpose of the
5 protocol is to render the inmate insensate so that
6 the second and third drugs can work without pain.
7 And if that didn't happen, that would concern me.

8 BY MS. LEONARD:

9 Q. Do the second and third drugs cause pain?

10 MR. SUTHERLAND: Object to the form.

11 THE WITNESS: If they -- if they were
12 the only drugs used, yes, if the person was
13 conscious, yes.

14 BY MS. LEONARD:

15 Q. So the only thing that's preventing the
16 person from feeling pain is the midazolam?

17 MR. SUTHERLAND: Object to the form.

18 THE WITNESS: My lay opinion is yes.

19 BY MS. LEONARD:

20 Q. And you're basing that opinion mostly on
21 reading other states' protocols that have worked in
22 the past?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: Okay. Just, you know,
25 experience I've had just through the years in

1 dealing with protocols, I know, you know, the
2 purpose of the three drugs. And so it wouldn't be
3 solely reading another state's protocol. It would
4 just be sort of an accumulation. It would be based
5 on the experience the Department has had with
6 three-drug protocols.

7 BY MS. LEONARD:

8 Q. And what has that experience been?

9 A. We haven't had any issues.

10 Q. How do you know that?

11 A. Well, as General Counsel we haven't had an
12 issue during the time I've been here.

13 Q. And how do you know that the midazolam is
14 rendering a prisoner as insensate?

15 A. Based on, you know, conversations I've had
16 with wardens through the years and with people who
17 have actually been there and experienced it and the
18 impact of the drugs on the inmate.

19 Q. But you've never talked to a prisoner who's
20 been injected with the three drugs, have you?

21 A. Of course not.

22 MR. SUTHERLAND: Object to the form.

23 BY MS. LEONARD:

24 Q. So when you say people who have been there,
25 you really only mean the members of the execution

1 team who have been there?

2 A. Right.

3 Q. Have you ever talked with someone who's been
4 administered midazolam in any other setting?

5 A. No.

6 Q. Have you ever had midazolam administered to
7 you?

8 A. No.

9 Q. So what is it that makes you so sure that the
10 consciousness check is effective?

11 MR. SUTHERLAND: Object to the form.

12 THE WITNESS: Okay. Well, as I
13 indicated, I think a couple of physicians have
14 mentioned these as viable ways to do a consciousness
15 check. You know, and there's literature out there
16 that also talks about various ways of consciousness
17 checking, and some case law has, you know, discussed
18 a consciousness check.

19 BY MS. LEONARD:

20 Q. Would you personally feel comfortable going
21 for a surgery and receiving only midazolam as the
22 anesthetic?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: I -- I would rely on my
25 physician about that.

1 BY MS. LEONARD:

2 Q. Would you feel comfortable if the only
3 assessment of your consciousness was the
4 consciousness check that's detailed in this
5 protocol?

6 MR. SUTHERLAND: The same objection.

7 THE WITNESS: I guess the same answer.
8 I would rely on my physician.

9 BY MS. LEONARD:

10 Q. Are you aware that medical doctors frequently
11 use machines to assess consciousness in medical
12 settings?

13 A. I think probably so.

14 Q. Why is it that TDOC is not using machines to
15 assess consciousness?

16 A. That would require some cooperation from
17 others that we probably can't get, and we're
18 comfortable with the consciousness check that we
19 have in the current protocol.

20 Q. So if you were going in for open heart
21 surgery and your doctor advised that you would get
22 midazolam and they would use only this consciousness
23 check and nothing else, you would go along with that
24 advice?

25 A. I would go along with my physician's

1 | recommendation?

2 Q. A brave woman. And why is it that you think
3 that the vecuronium bromide does not wake the
4 prisoner up?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: Well, I haven't heard of
7 that happening. And I believe that the midazolam is
8 sufficient with the consciousness check to ensure
9 that that won't happen.

10 BY MS. LEONARD:

11 Q. Well, would there be any way for someone to
12 know whether that happened given that vecuronium
13 bromide is a paralytic?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: No. It's based on the
16 consciousness check and the midazolam.

17 BY MS. LEONARD:

18 Q. You mentioned earlier that you toured other
19 states. What states did you tour?

20 | A. Virginia and the Bureau of Prisons.

21 Q. And that's it?

22 | A. Uh-huh.

23	Q.	Okay.
----	----	-------

24 A. Me personally that's all.

25 Q. Right. I'm asking about you personally. Are

1 you aware that some states perform executions by
2 firing squad?

3 A. I'm aware that Utah has.

4 Q. Do you know of any other states that still
5 have firing squad on the books?

6 A. Not that I can recall right now.

7 Q. Have you ever witnessed an execution by
8 firing squad?

9 A. No.

10 Q. Have you ever discussed execution by firing
11 squad with someone outside of Tennessee?

12 A. No.

13 Q. Have you ever discussed execution by firing
14 squad with someone at TDOC?

15 A. Only in the context of litigation that, you
16 know, with firing squad being alleged as an
17 available alternative.

18 Q. And have you looked into using firing squad
19 as an alternative to lethal injection?

20 A. I have not.

21 Q. Why not?

22 A. Because we feel like we have a constitutional
23 protocol.

24 Q. Could TDOC execute somebody by firing squad?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: Yeah, I really can't say.
2 I don't know what such a protocol would look like.
3 So that would -- that would take a lot of research
4 and I just -- I don't feel comfortable saying that
5 we could at this point.

6 BY MS. LEONARD:

7 Q. Have you ever discussed execution by firing
8 squad with someone in Utah?

9 A. No.

10 Q. Have you ever discussed execution by oral
11 administration of drugs with anyone at TDOC?

12 A. Just the same answer as with the firing
13 squad. Just in the context that that's been alleged
14 as a -- an alternative.

15 Q. And I think you briefly touched on this
16 earlier, but why is it that TDOC has not considered
17 this as an alternative?

18 A. Well, I'm not aware that any state uses it so
19 we don't have experience with it. I don't know what
20 such a protocol would look like. I don't know how
21 we would ensure that the inmate would willingly take
22 it.

23 Q. Could TDOC obtain the equipment to administer
24 drugs orally?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: I have no idea what
2 equipment, if any, would be required.

3 BY MS. LEONARD:

4 Q. Have you ever looked at any other states'
5 protocols -- scratch that. Have you ever reviewed
6 other -- other materials that states might use in
7 conjunction with their executions aside from lethal
8 injection protocols?

9 A. Not that I recall.

10 Q. So the only thing you've ever reviewed from
11 other states has been their lethal injection
12 protocols?

13 A. I don't know if I've looked at an
14 electrocution protocol. It's, you know, primarily
15 protocols.

16 MS. LEONARD: I think I'm almost
17 finished. Maybe we should take just a two-minute
18 break to touch base and then come back?

19 THE VIDEOGRAPHER: We are going off the
20 record. The time is 3:00 p.m.

21 (A short break.)

22 THE VIDEOGRAPHER: We are back on the
23 record. The time is 3:05 p.m.

24 BY MS. LEONARD:

25 Q. Just a very short handful of final questions.

1 Did you testify earlier that the person who trained
2 the warden in the consciousness check is the
3 physician on the execution team?

4 A. No.

5 Q. Who trains the warden on the consciousness
6 check?

7 A. A different physician.

8 Q. Okay. But it's not the person -- the
9 physician who's presently on the execution team?

10 A. Right.

11 Q. And was the physician who's presently on the
12 execution team a person who you consulted with on
13 developing the consciousness check?

14 MR. SUTHERLAND: I'm going to object to
15 the form of the question.

16 THE WITNESS: No, I don't believe so.

17 BY MS. LEONARD:

18 Q. Did you consult with the physician who's
19 currently on the execution team in adopting the
20 three-drug protocol?

21 MR. SUTHERLAND: The same objection.

22 THE WITNESS: No, I don't think so.

23 BY MS. LEONARD:

24 Q. How did you get in touch with the physician
25 who's currently on the execution team?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: I -- I wasn't involved in
3 getting in touch with him or her.

4 BY MS. LEONARD:

5 Q. Have you ever spoken with that person
6 directly?

7 A. I don't -- if at all, it would have just been
8 to say hello.

9 Q. Are you aware that that individual has had
10 his general surgery certificate revoked due to some
11 medical malpractice lawsuits?

12 A. I have heard that. I know we did check
13 licensure, and he was still a licensed physician.

14 Q. Do you know how many medical malpractice
15 lawsuits have been filed against that physician?

16 A. No.

17 Q. Would it concern you to know that it's over a
18 dozen?

19 A. Would it concern me? It wouldn't concern me
20 in terms of the ability to determine death and if
21 necessary do a cut-down procedure for whatever that
22 physician would choose.

23 Q. And why would that not impact your assessment
24 of his ability to do the cut-down procedure?

25 A. It's my understanding it's a pretty simple

1 procedure.

2 Q. Does the cut-down procedure require the use
3 of an anesthetic?

4 MR. SUTHERLAND: Objection to the form.

5 THE WITNESS: Okay. I'm not a medical
6 expert. I believe it would be the local anesthetic.

7 BY MS. LEONARD:

8 Q. Do you feel there's any testimony that you
9 want to clarify or change today?

10 A. Not that I can think of.

11 Q. Anything that you want to restate or
12 supplement?

13 A. No.

14 Q. And you didn't talk to your counsel during
15 any of the breaks today?

16 A. Absolutely not.

17 Q. Okay. Great. Then I think that -- that's
18 all that I have. So thank you, Ms. Inglis, for your
19 time. We appreciate you coming in today to answer
20 these questions.

21 A. Okay.

22 MS. LEONARD: I think we can go off the
23 record.

24 THE VIDEOGRAPHER: This marks the end of
25 this deposition. The time is 3:08 p.m.

* * *

THE REPORTER: Ms. Leonard, would you like to order her transcript?

MS. LEONARD: Oh, yes, please, to the
Federal Defender Office. Yes.

THE REPORTER: I think I've got that information. And would you like a copy, Mr. Sutherland?

MR. SUTHERLAND: Yes, ma'am.

THE REPORTER: Okay. Thank you.

FURTHER DEPONENT SAITH NOT
(Proceedings concluding at 3:08 p.m.)

REPORTER'S CERTIFICATE

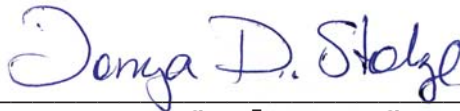
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COUNTY OF RUTHERFORD)

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